

MONTANA LEGISLATIVE HISTORY

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Chapter 564 19 95

Bill H _____ S 206 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 08 ☒ C

Mar 21 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 21 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 06 ☒ C

Feb 13 ☒ C

Feb 16 ☒ C

_____ ☐ C

Feb 16 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Free Conference Committee

Feb 10 ☒

1/20	FIRST READING		
1/20	REFERRED TO NATURAL RESOURCES		
1/25	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED AS AMENDED	49	0
2/04	3RD READING PASSED	45	0
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO NATURAL RESOURCES		
3/03	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	96	0
3/14	3RD READING CONCURRED	97	1
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	43	3
3/20	3RD READING AMENDMENTS CONCURRED	49	1
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 302		
	EFFECTIVE DATE: 10/01/95		

SB 205 INTRODUCED BY FORRESTER, ET AL.
INCREASE THE ALLOWABLE LENGTH FOR CERTAIN VEHICLES

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/09	HEARING		
2/09	TABLED IN COMMITTEE		
2/14	TAKEN FROM THE TABLE		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	50	0
2/17	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/06	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	85	8
3/14	3RD READING CONCURRED	85	14
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 209		
	EFFECTIVE DATE: 10/01/95		

SB 206 INTRODUCED BY BURNETT, ET AL.
REVISE LAWS RELATING TO INVESTIGATION AND REMOVAL OF A CHILD
FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR NEGLECT

1/20	INTRODUCED
1/20	FIRST READING
1/20	REFERRED TO JUDICIARY
1/27	FISCAL NOTE REQUESTED
2/02	FISCAL NOTE RECEIVED
2/03	FISCAL NOTE PRINTED

2/06	HEARING		
2/06	SPONSOR FISCAL NOTE RECEIVED		
2/06	SPONSOR FISCAL NOTE PRINTED		
2/13	TABLED IN COMMITTEE		
2/15	TAKEN FROM THE TABLE		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	37	12
2/20	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/08	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED	65	34
3/30	3RD READING CONCURRED	74	24
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS NOT CONCURRED	29	19
4/06	CONFERENCE COMMITTEE APPOINTED		
4/07	CONFERENCE COMMITTEE DISSOLVED		
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/10	HEARING		
4/11	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	1
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
	HOUSE		
4/06	CONFERENCE COMMITTEE APPOINTED		
4/08	CONFERENCE COMMITTEE DISSOLVED		
4/08	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	89	11
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	76	22
4/18	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 564		
	EFFECTIVE DATE: 10/01/95		

SB 207

INTRODUCED BY MESAROS, ET AL.

PROVIDE PROTECTION FOR AGRICULTURAL ACTIVITIES FROM
GOVERNMENTAL ZONING AND NUISANCE RESTRICTIONS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/03	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED AS AMENDED	49	0
2/11	3RD READING PASSED	46	3
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/15	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/28	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	92	6
3/14	3RD READING CONCURRED	91	7

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0206 as introducedDESCRIPTION OF PROPOSED LEGISLATION:

act revising the laws relating to the investigation and removal of a child from the home in a case of suspected abuse or endangerment of the child's welfare; prohibiting anonymous reporting of suspected abuse or endangerment; requiring criminal charges to be filed against a person suspected of abuse or endangerment prior to filing a petition for removal of the child from the home; requiring evidence of suspected abuse or endangerment to be given to the family; guaranteeing a family's communication with a child removed from home; requiring information on foster home placement to be given to the family of a child removed from the home.

SUMPTIONS:

Section 5 requires that all child abuse or neglect case interviews be recorded on video tape with audio track. It is assumed there will be 14,000 interviews each year of the biennium, each requiring an individual video cassette at an estimated cost of \$3.00 each. (\$42,000 per year)
 Each social worker (180) will need a video camera at \$1,585 each. (\$285,300 for the first year of the biennium)
 Approximately 25 DFS offices will require VCRs and TVs for playing the video tapes at \$600 each. (\$15,000 for the first year of the biennium)
 The video cassettes would need to be stored for up to 20 years. Since one file cabinet will store 100 video tapes, 140 file cabinets per year at an average cost of \$515 each will be needed. (\$72,100 per year)
 Section 5 requires an independent psychologist or physician representing the family and the social worker be in attendance at all examinations of the child. It is assumed this refers to medical examinations of the child and that there will be 250 per year. It is also assumed that the cost for the psychologist or physician will be the responsibility of DFS, at an estimated average cost of \$100 per hour. (\$25,000 per year)
 Section 5 of the bill requires that copies of all written, photographic, or radiological evidence must be sent to the child's family. DFS staff could copy the written evidence, but the copies of the photographic and radiological evidence would have to be made outside the department. With 5,300 substantiated cases per year averaging 20 pages per file and copying costs of \$0.10 per page, copying costs would be \$10,600 per year plus \$2,500 per year for outside copying.
 There will be no revenue generated by this bill.
 Because these proposals are not related to federal child abuse or neglect statutes, the costs will be 100% general fund.

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Costs	80,100	80,100
Equipment	372,400	72,100
Total	452,500	152,200

Funding:

General Fund (01)	452,500	152,200
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Section 9 requires criminal charges be filed in cases in which the department believes there has been abuse or endangerment of a child. Currently DFS substantiates about 5,300 cases of abuse or neglect per year. This would require County Attorneys to file 5,300 more criminal charges per year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The fiscal impact will continue into future biennia because tapes, file cabinets and physician costs are an annual cost. As the video library expands, additional staff would be needed to maintain the filling and distribution of the tapes.

Dave Lewis 2-2-95

DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

JIM BURNETT, PRIMARY SPONSOR DATE

Fiscal Note for SB0206, as introduced

SB 206

FISCAL NOTE FOR SB 206

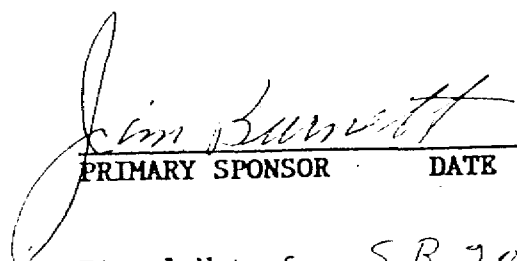
Description of proposed legislation:

A BILL CHANGING THE CODE RELATING TO CHILD REMOVAL BY THE DEPARTMENT OF FAMILY SERVICES.

ASSUMPTIONS:

- (1) This legislation will reduce the number of refferals that have resulted in removing children from the family and placing them in foster care by probably 25% (Page 1, Line 24)
- (2) SECTION 5 (41-3-202) ACTION ON REPORTING: Page 9, Line 28 AND 29
A video tape is not necessary unless the social worker makes the initial interview without someone representing the family. Sheriff and police department could take and maintain the video tape of the department negotiated with them to do so.

FISCAL IMPACT: NONE


PRIMARY SPONSOR

DATE

3 February 1995

Fiscal Note for: SB 206 Version: _____

SB 206

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By BRUCE D. CRIPPEN, CHAIRMAN, on February 6, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 206

{Tape: 1; Side: A; Approx. Counter: 00}

Executive Action: None.

HEARING ON SB 206

Opening Statement by Sponsor:

SENATOR JIM BURNETT, Senate District 12, Luther, sponsored SB 206. He presented the bill that he said had been in the making for the past four years. He gave the committee a packet of information (EXHIBIT 1) which included a list of more than 200 people who had contacted him during that time. The telephone

numbers were included for contacts if desired. The need for change is astronomical in this particular department, he said. He read from prepared testimony on Page 1 of the packet. **SENATOR BURNETT** said that he thought there was no impact, but the Department of Family Services issued a note that indicated a \$500,000 cost. He disagreed with that figure and issued his own response (**EXHIBIT 2**). He read the bill's intent from Page 1 of the bill. He maintained that there cannot be abuse if there is no abuser. He read the underlined sections of the bill that had been significantly changed.

In two instances he wanted to change "civil action" to "criminal action" in this bill, but he told the committee he had failed to do this.

Proponents' Testimony: **REPRESENTATIVE LARRY GRINDE**, House District 94, Lewistown, spoke in favor of SB 206. He said that in most cases the Department of Family Services (DFS) does a good job, but some things needed attention. He said that most of the calls he received at home concerned the area of child and family services. He gave a brief history. In Lewistown a woman died laying in her own feces from malnutrition, he said. This was reported on several occasions and nothing was done. Nobody took responsibility. The family was tried and found innocent, although he felt they were negligent. He thought that DFS could have prevented this. In another case, a young woman was living with her family. She gave birth to a baby one morning and that night, DFS representatives were there to take the baby away. He said maybe there was a need. He told the committee that they had to start using some common sense.

He had some items to address on the subject:

- 1) The qualifications of social workers: he said when workers are hired, the only criteria is a college education in some related field. He asked the committee to review hiring criteria to make sure of qualifications. There is no liability for the people in the field. He said everyone should be liable for their actions, and the duties they perform.
- 2) Rotation of social workers: He did not want to uproot their lives, but he said but it may help the workers to separate themselves from some of the cases if they did not know the players involved and heard rumors, innuendoes and accusations that are rampant in small towns.
- 3) Anonymous reporting: He thought people could make phone calls to the Family Services because of personal vendettas. The workers, then, are forced to go and investigate, he said. He thought the accused should have the right to face accusers. He said people making complaints should have to come forward and tell why.
- 4) Videotaping: He recognized the objections to this portion of

the bill, but said it was only fair. If there was no videotape, there should be other family members there, he said. The fiscal note said that in each case, a tape would have to be made, but that was wrong. He said other people should be at the table when interviews are given and not just the people from the social worker area.

There are other related bills introduced, he said. One had to do with the purging of files. This needs to be done when Family Services investigates a case and no problems are found. That file still sits there, even though it is without reason. He said everyone wanted to protect the children. He said there has to be some rights for families on recourse. Families do not have a way to get a court date, or see their children. He hoped for a resolution to include his recommendations, the bill, and some suggestions from Family Services which they had consulted during the prior week. He said that nothing had changed when he took his concerns to the DFS for the past four years.

Paul Befumo, representing himself and Montanans for Due Process, spoke in support of SB 206. He said current law resembles laws of many states, but it was not enforced in the same way. What Montana had claimed to do through their legislative and judicial branches, is to take children from their homes and give temporary custody to DFS only on a showing of probable cause. However, the way the Montana Supreme Court defined, "temporary" is until the child reaches 18 years of age. So, he maintained, if the State of Montana takes a child, they have claimed the authority to give temporary custody to DFS, and never afford the people who have been accused of abuse and neglect an adjudicatory hearing. All they have to show is a probable cause hearing. This bill would force DFS, if they wish to hold onto children, to have some sort of hearing where there can be findings of fact and conclusions of law that will justify the taking of the children.

What the bill won't do, he said, is to prevent DFS from going in in an emergency situation where a child is in imminent danger. But once DFS goes in to do that, it sets specific time limits wherein they must justify the allegations made. DFS cannot handle this situation of their own, he said, as evidenced in the case of **Marcia Kirchner (contained in EXHIBIT 1)**. A statement is made that she quit her job, which is incorrect. Within three days after the affidavit was filed, she was grilled by two higher authorities in DFS and the next day was dismissed from her position without cause and without any compensation. They fired her. This is how DFS handles their own caseworkers, he said. He said that the legislative and judicial branches are terminating parental rights without going through the statutes that dictate how parental rights are supposed to be terminated. If that agency takes a child for temporary custody, and that custody lasts until the child is 18 years old, the parental right has been terminated. He said legislation is needed to change that. Parents need the opportunity for an adjudicatory hearing to establish whether or not the underlying allegations are true or not.

William V. Fowler, Missoula, representing himself, said he had been enmeshed in the DFS situation for four years. In July of 1991 the Department of Family Services removed from his home a child over which he had custody. The reason for the removal was allegations from a half-brother, age 3, stating that his 7-year-old son had tried to put a toy up his "hindy-butt." Mr. Fowler was accused of teaching him how to do that. He had not been allowed to see his son, nor speak to him on the phone for the four years. He had hired different attorneys and spent \$35,000 and has never had a show-cause hearing. He now has a case in federal court to appeal. They said he had to exhaust his remedies, but he could not get the show-cause hearing after four years. It has to be changed, he said. Parental rights have been taken away and he told the committee that they would not get away with it for very long. He presented court petitions. (EXHIBITS 3 and 4).

Dan Newman, Missoula, representing himself, asked that where criminal law is violated, charges be prosecuted. He said that no immunity should be granted anyone working for the state, either in judiciary or an attorney. He said that ethical standards are abused in the state by the conduct of professionals including psychologists, social workers, and attorneys. The duty to clients and the idea of right and wrong is all 'who can put who in office and out of office,' he said. He ran for Justice of the Peace in Missoula and got 5,000 votes as opposed to 23,000 for his opponent. He said he was proud that there were 5,000 people in Missoula County who would stand with him to prosecute criminals. He said he was for law and order and bringing down organized crime, which he said ran the County of Missoula and perhaps other counties.

Fred Rushton, Vaughn, represented himself and spoke in favor of the bill. He told the committee about his son who lost his children to DFS because of an anonymous call that accused him of drunkenness and of beating his children. An investigation showed that he had no record and never drank in his life. The children were given back. However, he contended that Social Services don't like to be proven wrong and have done everything they could for the last three or four years to prove him an unfit father. Teachers at the childrens' schools had been enlisted to quiz the children about abuses and would call the social workers and police if they could get the children to say anything. For these reasons, his son moved out of the state to Arizona, leaving a \$50,000-a-year job. The family is doing well there now, he said.

David Brinley, from Central Montana, speaking for himself, supported SB 206. He read from a written statement. (EXHIBIT 5)

{Tape: 1; Side: B; Approx. Counter: 00}

Vicki Vincent, representing herself and her daughter, Amanda Henderson, appeared to support SB 206. She said she was lucky and got her daughter back after five weeks. Her daughter had

been taken from school by Child Protective Services acting on an anonymous call in which abuse was involved. The Protective Services decided she had been sexually molested by her dad on top of all else, she said. **Ms. Vincent** refused to speak to the social workers because she realized she needed a lawyer, but that refusal was held against her. When she went for a meeting with the social worker and the daughter, she was not allowed to ask questions, only to say that she loved her and supported her in everything. She wasn't allow to ask what happened. She did try to ask, however, and the social worker got very nasty and terminated the visit. Due to the allegations of sexual molestation, her husband was evicted from the house the following night. The social worker claimed he was still there, but did not bother to come and find out, she said. **Ms. Vincent** called everyone she could, legislators, papers, television stations, etc. The advise she garnered was that she would be lucky to ever get her daughter back. She heard nothing but bad reports about DFS. She finally talked to her daughter on a fluke and the daughter reported that the social worker had cautioned her not to talk to her mother about what had happened, or she would be moved so far away that she would never see her mother again. They had told the daughter that the mother hated her and did not want her at home. They divided and conquered, she contended. She found out later that the social workers had talked to the daughter for 30 minutes in school and 45 minutes after school before she was ever videotaped. In the videotape it was evident that words were clearly put into the daughter's mouth to make it appear that she had been molested. She repeatedly asked to go home, and was told if she played the game for the social workers, she would be allowed to go home. The daughter later realized the social workers had lied. **Ms. Vincent** wondered how many children were taken under the same circumstances and brainwashed into thinking that their parents don't want them. She did not know how Social Services could be allowed to keep kids for several months without the parents being charged with anything, but on accusations. She said that she was held responsible, as a nurse, for any mistakes she made. She could not understand why people who are messing with other people's lives are not held responsible.

She did not support the rotation of social workers. She said they would only have new prey to work on. She did support changing the anonymous reporting law. Anyone could call in with a personal vendetta, she said. Videotaping should be done in the first interview with no leading questions. It should be done by someone other than the social worker that initiated the case, perhaps a third party. She also supported SB 270 which deals with purging the files if no criminal charges are filed. She introduced her daughter.

Amanda Henderson spoke to the committee. The social worker had put words into her mouth, she said, to say she was sexually abused. She said the worker promised if she told her what she wanted to hear she would go home that night. She said she was in custody for five more weeks, and she later found out they were

lying to her as well as to her family. The first foster home she was placed in the foster mother was good friends with the social worker. The foster mother was an alcoholic who constantly verbally abused her own son and another child in the home at the time. Ms. Henderson was moved to a second home wherein her parents knew the family. She said the social workers had screwed up her life, causing her nightmares about being kidnapped, as she contends she was. She does not trust strangers because she is fearful of what happened would happen again. She gets sick to her stomach every time she hears the words, "DFS." She said the bill needs to pass because there could be many families "messed up" by the social workers.

Penny Bernhardt, Belgrade, spoke for herself in favor of SB 206. She read written testimony. (EXHIBIT 6)

Mindy Mystic, Grass Range, represented herself. She told the committee that in 1991 her ex-husband had made false accusations against her because she was planning to re-marry and he did not want her to. He decided to take the love of her life, her kids, she said. She went through three court hearings and all they found against her was that her daughter had not been enrolled in a speech class. The child had accidentally knocked her teeth out previously and the dentist told the mother not to worry about mispronunciation because of the missing teeth. The judge reinstated the children. The ex-husband along with the DFS re-opened the divorce decree to contest custody and took the children in 13 subsequent cases. She said that DFS later admitted to wrongdoing to re-open the divorce case. She had not seen or had her children for four years, she said. She had sneaked into school and basketball games to watch them and sneaked around church to give them gifts. She stated that she lost herself when she lost her children and said her insides were taken, leaving only the body to walk with. Four years later her ex-husband called her and asked her to take the youngest daughter, age 12, because he did not want her. He kept two older children, ages 14 and 18. She maintained the DFS had interfered in her life, assisting her ex-husband in untrue accusations. She felt the DFS had too much control. She also said the background check should be put into effect. The social worker who took her children was restricted from seeing his own child because of sexual, mental and physical abuse. Ms. Mystic thought the videotaping would be good idea. She said she tape-recorded sessions with social workers where they called her names, but they are not admissible, whereas a video would be. She asked for help in passing the bill.

Joan Austad, Great Falls, represented herself. She read from written testimony. (EXHIBIT 7)

Al Nerling, Sun River, representing himself, spoke on behalf of SB 206. He said he'd been fighting DFS for 12 years for his granddaughter. He finally got her when she was 16 years old, when, he said, the damage was done. He said when Gene Huntington

started Family Services, he was supposed to close the cracks. But 1988, he maintained, it had doubled instead. His granddaughter asked him to keep fighting so that other kids would not have to go through what she had been through. All he wanted is for DFS to abide by the laws we have, which they were not presently doing. He said they were the 'rudest, nastiest, lyingest people' he'd ever met.

John Schubert, Missoula, spoke for himself and his wife, Tammy, in support Sb 206. He submitted a letter he had written to the Governor in September, 1994. (EXHIBIT 8) He said there was a real need for checks and balances within the system. He felt that videotaping was very important.

Karen Kowalczyk, Roundup, represented her fiancé, Larry Lekse, in support SB 206. She spoke to the committee and submitted written testimony. (EXHIBIT 9)

Jerry O'Neil, representing Vocal of Montana, spoke on behalf of Sb 206.

Gary Wilson, Alberton, gave his name in support of SB 206.

Kenneth E. Haugen, Missoula, rose to support the bill.
(EXHIBIT 10)

Gerald Bartow, Roundup, also spoke in favor of SB 206.

Wanda Harris, Kalispell, stood in support of the measure.

Michael Billedeoux, Missoula, favored the bill. (EXHIBIT 11)

Frank Fitzgerald lent his name in support of the legislation.

Opponents' Testimony:

Hank Hudson, Director, Department of Family Services, appeared to respectfully oppose SB 206. He said the proposal of checks and balances are the debate and struggle the department members go through daily on every case they hear. They must decide how to balance the legal responsibility they have to protect children and adults with the right that citizens have to be left alone by their government and not be dictated to unnecessarily. He said that the bill has been heard three or four times that he could remember, and each time their department members ask themselves how they could be more careful and cautious in dealing with families while recognizing the effect that removing a child from a family might have on those members of the family. However, they must avoid the tragedy of child abuse and death that occur all too frequently. He said they had tried to safeguard against any social worker "running away with the program", lacking sense and being unfair. During the last hearing of the bill, they presented a chart showing how many people would have to be convinced that it was the right thing to remove a child from a

home for more than the 48-hour emergency proceeding. Not only the social worker would have to agree, but also the supervisor, the Child Protective Service Team, which is made up of a number of people who do not work for the DFS, the County Attorney, the guardian ad litem, an attorney for the parents if they have one, the judge and eventually the Foster Care Review Committee. They have made some changes, he said. They have moved some of the scarce resources they have into family-based services.

He told the committee that the best protection a child can have is being home with their families and whenever that is possible, that's what they try to accomplish. He also said they had changed their legal process for notification which informs everyone who had a substantiated case of abuse that will describe the appeal process of the department. Another problem previously stated was the shortage of workers and unreturned calls. They have asked for more helpers and more training than ever before, he stated. They have probably taken more disciplinary actions than any state department in the last two years, he said without relish.

They support the Foster Care Review Pilot, reviewing children in foster care. They endorsed and welcomed a legislative review during the interim. The results of that review read, "in short, it would appear that Montana's statutes for providing emergency child protective services are Constitutional because they do allow the state to intervene in an emergency situation to protect a child's best interest. . . and do allow a process of notification and hearing for parents in consideration of due process rights." They are painfully aware of what a mistake can do in their department. He said in **Representative Grinde's** example of the woman dying from abuse, the family was charged with neglect and found innocent. In that case their department would have had to return that woman to the home, and it would not have prevented the situation.

He said HB 186 by **Representative Kasten** would provide more information to families and provide greater access to records for those accused of abuse and neglect. The department was willing to add a provision to prevent the removal of a child based on an anonymous report. He said he would also support the immediate notification of parents if children are removed.

Mr. Hudson said their department had a large number of people who advise them (made up of citizens who are not a part of the department) and it was his preference to work with more people for a major change in structure like this bill.

The biggest objection the department had to the bill was the provision that criminal charges had to be filed in 20 days. It is not a realistic understanding of how the system works, he said. Not all child abuse and neglect is criminal, many are dealing with people with developmental disabilities and also mental illnesses. These people would not be guilty of a crime to charge

them with. They did not want to put them in jail. Secondly, he said, charging everyone with a crime or doing nothing would destroy the department efforts at family preservation, which has been the major focus of the past. The criminal process is slow, he added, and county attorneys are faced with the decisions of what they can afford to prosecute every day, whether or not it's winnable, whether or not they have the staff. Kids may be sent back into danger to wait for a year for a trial when they could be working on family re-unification instead. He said there are two different systems: 1) the criminal system, to assess guilt and punishment and 2) the civil system used to protect children and to take quick, immediate action.

The videotaping issue is a very expensive item, he said.

The guardian *ad litem* issue in the bill suggested "being friends and retrieving things from the home," but he said he was unsure if they would be paid or used in that function, but he thought they could be volunteers.

The psychological testing question would require a doctor at every interview and would carry a heavy fiscal note.

The qualifications of the people hired are set at the point at which the pay can attract applicants. Mr. Hudson said. He was comfortable with the qualifications of the employees. Anyone who deviates from the policies or the laws of the state as an employee is personally liable, he said, in response to that portion of the bill. If they are following the rules of the department and something happens, the department is liable.

Of the rotation provision of the employees, he said he would rather the employees be a part of the community and would reject the management practice of moving them around the state.

He agreed with the anonymous reporting provision of the bill. He stated current law makes it a criminal offense to report child abuse in less than good faith or in a dishonest manner. Being faced by an accuser was also current law, he said.

He told the committee that the department gets placed in the middle of many divorces, the worst activity they face. If there is a bill this session, there should be one to tell people how to behave in custody matters and how inappropriate behavior can damage their children. He felt many of the provisions of the bill grew out of mean-spirited custody proceedings.

The DFS would support SENATOR BURNETT'S other two bills with amendments pertaining to the destruction of files and placement of children with kin.

Ann Gikley, attorney, Department of Family Services, presented written testimony. (EXHIBIT 12) She also told the panel that the flow chart Mr. Hudson made reference to regarding the current

checks and balances could be found of Page 3 of her hand-out.

Noel Larrivee, Executive Director, Montana Council for Families, said that he spoke for the statewide non-profit agency that serves the National Committee for the Prevention for Child Abuse and Parents, Anonymous, Inc. He is also an attorney and had been involved in child advocacy issues for approximately 16 years. He had written seven bills since 1985 considered in this committee. This is a bad bill, he said. He said the DFS is involved in these cases initially, then they are filed through petition by the county attorney, an independent entity apart from DFS. After the petition is filed, it's heard by a district court judge. These proceedings are confidential, in order to protect the child and family members that are the subjects of the proceedings. Some of this bill would undo that, he said. If there are problems, there are mechanisms existing now to deal with that.

He listed the following objections:

Page 1. Lines 19-20. Nowhere, he said, does existing law allow DFS to circumvent the Constitutional rights of persons or families.

Page 1. Lines 21-22. The burden of proof is on the state. The standard of proof has been established by the Supreme Court, which is, "clear and convincing evidence." Changing the burden does not alter the incidence of false charges; they are two separate charges. These types of proceedings are civil proceedings. The concept of "innocent until proven guilty" is a criminal concept, he said. The burden of proof is always on the state, he alleged.

Section 1. Line 12. He said the language is redundant.

Page 2. Section 2. Lines 19-21. He read, "no removal of the children without a criminal complaint." He said this is the single worst provision in the bill. There are many good reasons why the department does not have a criminal prosecution, as the Director had pointed out.

Page 4. Lines 1 and 2. This deals with interference. His interpretation was that this would preclude formulation of a treatment plan, one of the express provisions of child protective service intervention.

Page 5. Section 3. Lines 13-14. This imposes the requirement of, "acting knowingly." Negligent harm is just as harmful, he said. He gave an example of a child put in scalding water and the caretaker said he did not know the water was too hot. Under the new provision, this conduct would be excused.

Page 6. Lines 18-22. No person has ever been prosecuted for sexual abuse for attending to a child's hygiene or sanitary needs.

Page 9. Lines 17-20. He said he did not know what the term, "attributable information," would mean, as it has no legal significance.

Page 11. Section 6. Lines 3-5. This pertains to evidence obtained without a videotape. This would significantly hamstring many cases, he said, particularly infants and statements made to school counselors.

Page 12. Lines 29-30. Regarding the family member keeping the proceedings secret or allowing them to disseminate information, he said that confidentiality is designed to protect the child. It is also designed to protect the family members. Any aspect that is removed could do damage to the child.

He said the sections on news organizations and "under oath" requirements are unnecessary. Concerning guardians, he said not all counties have volunteer persons in place for that position.

The telephone legislation would be traumatic to children, he told the committee. The bill itself would be regressive, setting back child protective service efforts 20 years. He invited the committee to visit professionals on this bill.

Erinne Haskett, mother, founder of Majority Against Child Molestation (MACem), testified against SB 206. She took exception to Lines 21 and 22 on Page 6 under "definitions". She said her two-year-old was molested by the child's father. She described the on-going abuse. The father's actions would be protected under Line 21, "as considered by a reasonable person to be comforting of the toddler by a loving parent." These two lines afford a child raper a loophole in their defense. These people are wily and manipulative, she said, and use threats against the lives of family members to achieve their goals. She thought many little lives would be left unprotected if the bill would pass. She submitted two hand-outs. (EXHIBITS 13 and 14)

Connie Griffin, member of MACem and mother, spoke against SB 206. She said her two girls had been raped and molested by their father, causing injuries. She described a horrifying story. The DFS was contacted immediately by the doctor and visitation was suspended. The girls were interviewed by DFS and videotapes taken, which, they said, were inadmissible in court because cross-examination was impossible. She said all the evidence was collected and still sits in a county attorney's office under piles of other more important cases. At one time, the county attorney's office had granted the husband visitation against all professional advice. She called **Hank Hudson**, and within four hours the visitation had been cancelled. Only civil charges will be filed against the father, if any, she said, and the only thing that keeps the girls from being raped, tortured and violated is something called "dependency neglect." If it was not for DFS, she felt the children would be subject to harm. She said the county attorney offices are understaffed and tried to maintain a

quota system, which precludes "baby rape." She strongly opposed the bill.

Sharon Bakerson, L.P.N., spoke in opposition to the bill. She said she opposed Lines 17-20 on Page 9 of the bill. She said these lines will ensure that the victim will remain in the torture chamber as professional social workers will attest to the fact that it will take sometimes six months to years to get enough evidence to prosecute a molester. She said in Lewis and Clark County, if the county attorney and five deputies process 250 felony cases in one year, they consider it a good year. The child molestation cases were difficult, she quoted the sheriff as saying. She said local police officers were given on-going techniques in child abuse cases. She said the bill would be detrimental to many children.

Nina M. Pullman, East Helena, mother of three, Department of Revenue employee and a member of MACem, spoke against SB 206. She said she had been sexually molested as a child, as was her daughter. An abused child needs immediate and professional care, she said, and she thought DFS had been doing their job to capacity. If the bill passed, she said it would bring problems and heartache for everyone involved. She did not see the system as being broken and saw no reason to fix it.

John Connor, appearing on behalf of the Montana County Attorneys' Association, said that the 56 County Attorneys in Montana have frequent disagreement with the DFS, but they were mostly because of good faith mistakes. The legislature (through the division of criminal and civil codes in the area of child abuse) does not require proof beyond a reasonable doubt in every instance in which a child needed to be dealt with, cared for, or even removed from a home because of some immediate problem or inadequate medical care. In the majority of cases where they are involved as prosecutors, he said, the child is left in the home and treatment programs are worked out with the parents in an attempt to try to maintain family unity. If the whole process in criminalist he thought it would have the ironic effect of further distancing the child as a victim from the family as criminal perpetrators. And ironically, again, would allow additional notification to the parents such as where the child is living, etc., even after the parent has been charged with the crime. He said it is not a perfect system, but does the best it can to protect the welfare of children. The bill would do serious harm to child protection services.

Tiana J. Pullman, member of MACem, also a victim of child molestation, spoke against the bill. She said the bill would allow children no rights. DFS protects children, she maintained, and the bill would not. She told the committee that molesters are sick people who do not think like normal people. She said if anonymous phone calls were not allowed, nobody would report the abuse cases if their lives were in danger. If the children knew they had to return to an abusive home and have further contact,

they would not report the abuse. Children cannot defend themselves against this kind of abuse, she contended.

Bob Torres, representing the National Association of Social Workers, spoke against the bill. He submitted three hand-outs. (EXHIBITS 15, 16, and 17)

Dennis Paxinos, Yellowstone County Attorney, testified against SB 206. He said in private practice he had represented many parents whose children had been removed. The vast majority cases the DFS works with are neglect cases, many times resulting from alcohol and drug problems. The bill does not address these cases. There are two types of abuse from a prosecutors point of view: 1) abuse where a child has been burned or physically harmed, easily identifiable, and 2) sexual abuse, which is very difficult to prove. The criminal charges required in the bill will re-victimize the victims. In his county, they had organized a Child Protective Study Team made up of volunteers who meet and determine how to handle these difficult cases. He recommended this program to the committee for other communities. In all cases, there is an independent judge making decisions, he said, and he urged the panel to opposed SB 206.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, the state's largest family advocacy organization and a former foster care parent, said SENATOR BURNETT'S concerns for the children were sincere, but she could not support the measure as written. She read from written testimony. (EXHIBIT 18)

Steve Shapiro, appearing for the Montana Nurses Association, numbering 1,400 members, presented written testimony. (EXHIBIT 19)

Informational Testimony:

The following documents were presented for inclusion in the minutes without testimony:

- (EXHIBIT 20) - Randy Mills, Helena.
- (EXHIBIT 21) - Gary Marks.
- (EXHIBIT 22) - Bud Rist, Billings.
- (EXHIBIT 23) - Collection of letters from MACeM members.
- (EXHIBIT 24) - Collection of signatures in support of SB 206.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked SENATOR BURNETT about the criminal charge provision. In that all the people in the room who had testified for the bill would have been charged with criminal offenses(as they would have under his 1993 bill), did he still believe that it would be a productive avenue in an attempt to handle the issue?

SENATOR BURNETT said, "yes." He said under civil law, they have

no recourse unless they want to spend money. He said sometimes people have spent \$100,000 trying to get their children back. If it was a criminal charge, they would have recourse and would be able to face their accusers.

SENATOR HALLIGAN said that if a person were charged with a criminal offense, the county attorney would file a no-contact provision for the duration of the proceeding. He said there may be a situation that the judge in a criminal proceeding prevents the people from visiting their children. Was he trying to do that in this legislation, and would it be counterproductive to their intent?

SENATOR BURNETT said there may be a problem with the county attorneys, but that was their problem and they could cope with it.

SENATOR HALLIGAN stated that if, as County Attorney Paxinos testified, they cannot necessarily prove abuse without photos, (for example in the case of a young child), this bill would leave the child at home with the abuser.

SENATOR BURNETT said the bill was for family values. In many cases and there are better than 200 names (on a signature page in his exhibits), he said, the people were unable to get any response. The Governor told him judges could protect the people, but he did not believe the judges were protecting any of the people.

SENATOR STEVE DOHERTY asked Mr. Hudson if mistakes were made by the Department in taking children without proper justification, would the department be liable in a civil proceeding? In the last five years, how many civil proceedings have been brought against them? How many were successful, he asked, and have they paid out any money as a result?

Mr. Hudson said he did not know, but they do keep track of it. The Department has paid some, he said, in accusations of being too aggressive and not aggressive enough; for removing children too quickly, and for not removing children. The majority of cases, they win, he said. He promised the exact figures to the panel.

SENATOR DOHERTY asked Mr. Befumo about a case in his hand-out pertaining to two youths, and he wanted to know if it was from a court file that was currently sealed.

Mr. Befumo said he did not know. He said the issue was more of the question of adjudicatory hearings that are not usually afforded people.

William A. Fowler answered the question. He said he had given the document to Mr. Befumo. He said the contents were not sealed.

SENATOR REINY JABS asked SENATOR BURNETT if he consulted the DFS and county attorneys in putting the bill together over the last four years?

SENATOR BURNETT said that a number of attorneys had input into the bill, in addition to psychologists and many people who wanted to see an end to the tyrannical actions of some case workers. He said in most cases, they did a good job, but had some workers had a disregard for the people they served.

SENATOR JABS asked if he thought the children would be adequately protected under his bill.

SENATOR BURNETT said they would be. He said sometimes records are sealed and social workers, judges and the DFS hide behind the law of confidentiality, not allowing a hearing. He said when the law was changed from civil to criminal law on spousal abuse, it cut down the crimes drastically.

CHAIRMAN CRIPPEN asked Mr. Hudson to give his reaction to Mr. Befumo's comments on the hearing process.

Mr. Hudson said that for the Department to have continued custody beyond the 48-hour emergency process, they needed to appear before a judge and show probable cause. At that time, family members or anyone involved can argue their point. A time limit is set to return to court if extended rights are sought by the Department. His view of the hearings process is that it is set before an independent decision-maker which allows for contradictions and questions of the Department's actions. He said the courts could give them custody of children to age 18, and there were other opportunities for families to challenge that in court and frequently they do, he said.

CHAIRMAN CRIPPEN said some of the proponents were concerned they did not have opportunity for a hearing, and that they had no opportunities to speak to their children and grandchildren. What is the procedure on this?

Mr. Hudson said that the decision is made in the best interest of the child. The judge may give on-going orders and families are allowed input. With persons accused of sexually abusing a child, there is fear of unencumbered access. He said a gradual, safe reintroduction is usually arranged in proscribed treatment plans.

CHAIRMAN CRIPPEN asked if there was a procedure where the parents could speak to their children, other than, "I love you," as they had heard in testimony.

Mr. Hudson said they met with parents before visitations and go over ground rules of appropriate conversations. Any effort to change the testimony of the child is not allowed. He did not think the example would have been appropriate. In a further

inquiry about qualifications of caseworkers, he said specific discussion would be at the discretion of the caseworker. He said the suggestion of the **Chairman** that more definitive guidelines would be well worth looking into.

SENATOR LINDA NELSON asked about Page 9, Section 5, Subsection 2, in which the bill would stipulate that the initial investigation must be conducted within 48 hours, and she asked **Mr. Hudson's** reaction.

Mr. Hudson stated that 48 hours may be too restrictive, but he thought the point being made was that they should have more than an anonymous phone call to respond to an allegation and then to proceed in a timely manner.

Closing by Sponsor:

SENATOR BURNETT told the committee that many attorneys could give different opinions on this issue. Much of what was said, isn't what was happening, he said. He wanted the DFS to cease in breaking bonds between parents and children. Sometimes children are placed beyond the distance of where the family could reasonably go to visit them, he said. In one case in Lewistown, a woman was accused of being an unfit mother and the hearing was taken to Livingston. References in her favor were not allowed to testify. **SENATOR BURNETT** tried to intervene in the case and received a hard reprimand from the judge.

He said people had no recourse and could not bring suit against the DFS who had county attorneys, judges and the state behind them. He thought they abused that privilege. His main interest was not to disseminate the department, he said, but to end the dysfunctional caseworker problems. He said that the change to criminal law would bring more openness and eliminate a lot of confidentiality. He pointed to his written testimonials and asked the committee's consideration of those materials.

TESTIMONY

SENATE BILL 206

"If you don't get the facts right, you will come up with the wrong decision."

In the November election the voting public indicated they definitely wanted a change as to how the Departments were functioning. After a meeting last week with the Department of Family Services personnel, plus listening to their testimony in the Finance and Claims Subcommittee, I am convinced they only intend to make moderate changes. Another indication that makes me believe they are not interested in substantial change is that they have no legislation in this session to do so.

Several years ago I requested several different District judges to empanel a grand jury to investigate this Department. The judge that did respond to my request indicated that what I wanted would be better achieved through legislation. He also said that in his opinion, possibly two out of three child removal cases should never have occurred, this ruined two families. This is what this legislation is all

about. It also gives me resolve to make the effort that substantive changes that are needed in DFS in how they protect families and children.

It is obvious by the numbers of people here, those who have corresponded with me and those testifying here today, that something is wrong in this Department.

There is no doubt in my mind and those of many who have come to this hearing, some having come from a great distance, to support change in the direction of DFS, as we know today.

SB 206 will be a step in returning some public confidence in this Department, and government in general.

5

STEPHEN C. MOSES
Attorney at Law
P.O. Box 23337
Billings, Montana 59104
Phone: (406) 259-5804

EXHIBIT 1
DATE 2-6-95
21 SB 206

February 2, 1995

Re: Senate Bill 206

TO WHOM IT MAY CONCERN:

I am a practicing attorney in Billings, Montana. The power of DFS has caused me great concern. It is important that there be an agency that protects children, but not dictates the decisions of parents. As we are all aware, there is no blue print on how a child should be raised. We all do the best we can with what we have to deal with. No one wants the tragedies that occur, and few deal with them as much as DFS. However, DFS has taken the position that they can decide the fate of children and in the name of children, rip families apart.

I have had DFS file papers and take children that are only a day or so old. The basis is that in the past the mother was a problem. She has no other children, but because her life was difficult, she will abuse any child she might have. Taking the child is the only thing the department knows. They prepare an affidavit, present it to a busy Judge who signs it as following the statute, and the parent is left alone, confused and facing serious allegations, having never had even the chance to establish herself as a good mother. In the cases I have had, the child was returned and the mothers have turned out to be quality mothers.

Older children are pulled from their family because the single mother, working to make ends meet, doesn't have a spotless home, or has a poor choice for a boyfriend, or simply can't provide the things "normal" kids have. Bad parent, probably not. But the Department takes the child, imposing a far greater burden on the parent. Isolation, foster parents who can provide more material things, and refusal to provide information to the parent leads to distrust and hatred. All this based on an affidavit carefully prepared to have the correct allegations to establish a prima facie indication of abuse. Judges schedule 10 minutes for the hearing called for in the TIA. Most parents are confused and only want what is best for the child. Only a small percentage fight the TIA, believing the Department is there to help. The Department has little burden to maintain total authority over the parent. Visitation is almost non-existent. Parents who insist on seeing their children are labeled trouble makers. Only then do they come to seek an attorney

If family is important, and it surely is, then the Department needs to change its child snatching tactics. Most problems can be worked out with the parents while the child is left in the home. Few problems involve violent threats to the child. If that is the case, the criminal statutes and bail conditions can keep an abuser away. The child does not have to be torn from their home. The innocent parent, who may not know what is happening, does not have to be punished. In this situation, the abuser wins, not the innocent parties. DFS helps the abuser obtain what they want, misery for the family.

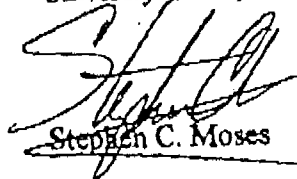
When a child is taken, the child usually feels they have done something wrong. The Department helps this feeling by keeping the child out of the house. Children understand punishment. If they can't see mommy or daddy or both, someone is being punished. Their entire value system is destroyed. Most children will contact their parents, even if the Department tells them not to do so. If there are problems, helping to work them out while the child maintains their support system in the family, is far better for the child than ripping them from their home. A bad parent, under supervision, is better than no parent at all.

As I understand the bill, the Department will have to establish beyond a reasonable doubt that there is abuse and neglect. Access to records and documents will be provided. Both are very good things. The vast majority of parents are not dangerous to their children and not guilty of abuse or neglect. The key, however, is keeping the family together. This is something the Department has failed to do.

I would urge the passage of this bill and next session a complete overhaul of the system. If the Department had to keep the families together, the costs would be reduced, the focus could be on family counseling and people would be more agreeable to working with the Department.

If I can be of any assistance, please contact me.

Sincerely Yours,



Stephen C. Moses

EXHIBIT 1
DATE 2-6-95
1 SB 206

Martha Adolph
#4 Camp 3 Road
Roundup, MT 59072

Senator Jim Burnett
Capital Building
Helena, MT 59604

February 2, 1995

Dear Senator Burnett:

I am writing this letter in the interest of my daughter's and all the other children that I hope will be helped by Senate Bill 206.

My daughters were removed from my home on November 22, 1993 for neglect. The Department of Social Services had received a call that my girls ages then 16 & 13 were being left alone. The Department removed my girls and let them stay with friends until Monday when I went into the office and signed the necessary papers to place them in Foster Care. I signed these papers because I was told I did not have a choice, that the girls would be taken either way.

I was very cooperative at the beginning of this nightmare. I started a chemical dependency program, that was in my TIA stated I needed to do. I was unable to complete it because I did not feel comfortable in a group setting. I went to the Social Worker and also the Counselor and asked if I could do this on a one on one basis. I was told and I quote "If you want your kids back you'll finish this class, otherwise you can kiss them Goodbye". Since the others in the group didn't keep things confidential, I didn't want to discuss the issues that I had with them. Because of this I never went back. Then my visits with my girls were getting cancelled time after time for various reasons and then I was told I could no longer see the oldest one at all. I have not seen her since June 28, 1994 and that's tearing me apart because of the closeness I felt with my daughters. I felt then and still do now that the Department was making me choose one daughter over the other.

Now yesterday, January 31, 1995, was the day I was suppose to see my youngest daughter. I have also been requesting to see my oldest daughter. I picked up the phone and called the Department to find out before I went to see if my oldest daughter was going to be there for the visit. The secretary told me she would have Vicki, the social worker, get back to me. Vicki Fawcett, the case worker returned my call and asked if I had received her letter. I said I had not and she proceeded to then inform me that the visits have been stopped. I was shocked. Why I asked? She said it was because the visits are non-productive. I said they would be productive if you would let us talk, but you don't. Vicki then reminded me that I had refused to sign two (2) treatment agreements and we would be going back to court soon and this time Vicki said it's not going to be for the TIA to continue, it's going to be for permanent custody. I told over my dead body are you getting custody of my girls. Then Vicki told me that the abuse charge still stands. You see DFS is charging me with abuse because 12 years ago the girls were molested by a family

member, who was also a child at the time and because I didn't remove the girls from the home they say I did not protect them and I still can't protect them for that happening. I have left that home which was in Colorado and moved to Roundup to try and start a new life for myself and my girls but what happened in the past is still haunting me. At this time Vicki stated that she had another report come into her office that I have been in contact with two (2) other children and I was endangering these children because my girls were taken for abuse. Never have I been told that I could have no contact with children. Well I didn't have to ask who made the call I already knew. It was my new husbands ex-wife. She was mad at him so to get back at him she made a call to DFS. The Department doesn't check out these rumors, they take everything they hear and turn it into whatever they want. The credibility of the people that call are never checked out. In most cases that I have heard of it seems like you are guilty no matter what you say. I am so hurt by all of this. I love my stepchildren like my own. I would never hurt these children or any other child for that fact. This is not only punishing me but also my husband. He doesn't deserve this, his children don't deserve this and neither do I.

Because of another false report I still feel this is one of the reasons I lost my visits. One other is because I'm speaking up. The Department wants you to be quiet and be led around by the nose. I wrote to the Governor and also wrote a letter to the editor of our local paper and The Billings Gazette. These letters were used against me in court. I was told that I was an unfit mother and should never have my girls back. This was told to me by the girls Guardian Ad Litem.

I am being told over and over that the whole purpose of the Department of Family Services is to bring families back together but all I see in my case and many others is that they tear them apart and never intend to help reunite these families.

Maybe these social workers don't understand what it does to mother to be separated from their children and I wouldn't wish it on my worst enemy. I cry at the drop of a hat. I've had to quit two (2) jobs because I couldn't work around all the meetings, classes and whatever else it was that DFS came up with for me to do. I still get up in the mornings and go to wake my girls. When it's time for them to come home from school I still hear them saying "HI, MOM, I'M HOME. It's been so long since I heard them really say anything of any importance, because they are afraid to talk in front of the social worker. They don't want to get in trouble or want me to get in trouble for something they might say. I try to tell them this isn't their fault but I can see it in their eyes that they don't believe me. They think since they got taken away that they must have done something wrong. My girls are being hurt too. My oldest one has been tested for everything under the sun including HIV. I'm sure that is very scary when your mom isn't allowed to be there to hold your hand and support you through all of it.

I just want my girls home with me so I can start to heal the wounds that all of this has caused, not only for myself but also for my girls. I know I can't stand the pain of being away from them so if I feel this way, I know that my girls are hurting. I have a big whole in my heart and that won't go away until my girls are home where they belong.

EXHIBIT 1
DATE 2-6-95
SB 206

stands, DFS has way to much power and they abuse it over and over again.

Thank you for your time in listening to my case and for trying to stop these kinds of nightmares before they happen to someone else.

I'm just one MOTHER OF MANY WHO WANTS HER CHILDREN HOME.

Martha Adolph

Martha Adolph

Senator Jim Burnett
Capitol Building
Helena, Montana

TO WHOM IT MAY CONCERN:

This letter is written in support of Senate bill 206, by Senator Jim Burnett. I wish to express to you the problems I and others in my small community have had with the Department of Family Services.

I am the mother of two children. My husband and I were divorced in 1979 and I was left to raise the two children. I had very little education but worked several jobs and did the very best I could, with the help of my parents. We lived in Roundup, Montana and the kid's father moved out of the State. The Department of Family Services were never involved in my life.

In 1989 my prior boyfriend, who was living with myself and the kids, was charged with Sexual Assault of my daughter, then 12. My son was 15. I knew nothing about the charges. When I was told of the charges, I immediately went to see my daughter, who was in the control of Family Services. I also told my prior boyfriend to leave until I could find out what had happened. I went to find out what happened and was told by DFS that I could not talk to the children about what had happened. I was told that if I did not do what they wanted, I would not be allowed to see or be with my children. After all these arrangements, I got both children back. It was only the start of the nightmare.

I made arrangements for my ex-husband to take my daughter for a short period of time. The Department said they placed my daughter out there. My son was "placed" with my folks. DFS, without notice, then placed my son in an unlicensed foster home. A TIA was filed by the Department on the basis that I was neglecting and abusing my children. I was not allowed to see my children, except with the consent and supervision of DFS. Visits were few and far between. I had done nothing wrong. No one would talk to me, my family was spread all over and DFS specifically got my ex-husband involved with rumors of wrong doing. The man accused wasn't even around. As the trial approached, no one would talk with me. When my daughter came to visit DFS got the police and charged into my parent's residence and wanted her because they had not allowed any visits. I had not seen her for several months, no one was around, my Ex-husband and I had made the arrangements and she was asleep on the couch. An attorney personally came to the house at 10:00 p.m. and virtually threw the DFS person out of the house, after she informed him she could do anything she wanted to with the children. After this incident, my ex-husband was told never to allow me or my parents, access to the child. We were allowed almost no visits with the children.

The TIA also brought my parents into the case. The DFS alleged that they were also abusive and neglectful. My parents are very good people and have always been involved with my children and most of the children in the community. They go to almost every event, whether it be sporting or otherwise, that involves Roundup children. My father takes pictures for the annual, which they do free of charge, just to support the local kids. My mother has and still does help the Justice of Peace and Youth Probation with kids that have gotten in trouble for one thing or another. She supervises these kids while they are on Community Service. She finds the work that needs to be done and makes sure that the kids follow through with getting their hours completed so their fines are paid. We have all helped the children in this community who at times are troubled due to divorce or problems in their families. My father is on the City Counsel. Both were very involved with the kids and are now actively involved with the kids. Despite this, DFS included my parents, who did not live with me, in the TIA, obtained with just an allegation. Neither my mother nor father knew anything about the alleged abuse of my daughter. They did know that things DFS was saying were inaccurate, but DFS didn't want to hear that and accused my folks of terrible things which were totally false.

In the end, my prior boyfriend was acquitted of the charges against my daughter. He left the State shortly thereafter for good. DFS did not stop. My son, who was told to have no contact with me was forced to sneak over to see me and get money because he needed lunches and things at school. I have always tried to teach my children not to go against the authorities, but in this case DFS was not providing for him. He risked punishment, but he came to me because I would help him and he knew that. DFS is teaching children to lie and sneak around. A custody battle raged over my daughter. I could not get reports from DFS without legal assistance. My son finally told DFS to get lost and left town to avoid all the hassle. After getting the reports, most of the reports were false. I had done what they wanted and the reports were inaccurate and slanted against me. I had done nothing wrong and my family, that I had worked so hard to get together, were forced out of town, it cost a fortune to fight the custody battle that really was not needed, and misinformation cost me my children, until now.

My son and I have a good relationship. My daughter has now returned home to live with me. It is sure funny that the kids are back to live with the person that DFS said was abusive and neglectful. DFS never once attempted to put my family back together. They decided to destroy my family and I did not have anything to do with the charges against the prior boyfriend, had done nothing wrong, but was blocked from seeing my children at all. In addition, my parents were not allowed to see the kids after being a very important part of their life for 13 years. Even my folks were punished.

This whole thing could have been avoided if the kids had been left with me. If there was a problem with the prior boyfriend, my kids are far more important than any man. DFS was so involved in the criminal charges that they refused to see the truth or determine what was in the best interest of the kids or my family. Taking the kids was done without any input from me and based on inaccuracies, speculations and accusations, not facts. As noted, if they would have had to prove their case, they would have lost. The

kids had been told lies about me by DFS, they made a very bad situation in to a nightmare, left the family in shambles and walked away. **I DIDN'T DO ANYTHING, WAS NEVER TOLD ANYTHING, I WAS JUST PUNISHED BY NOT SEEING MY CHILDREN. BEING ABLE TO TALK TO MY CHILDREN OR BEING TOLD ANYTHING ABOUT MY CHILDREN.** DFS intentionally attempted to destroy my family.

An isolated case? No! Since my experience, children of friends have been taken because the house is too dirty for the DFS people. If they are poor, many things can be found to be complained about. Children are abused and parents allowed to be in events the children are involved in are told the wrong date if the child tells about the

myself. The seizures are for my days. I refuse to provide reports without being

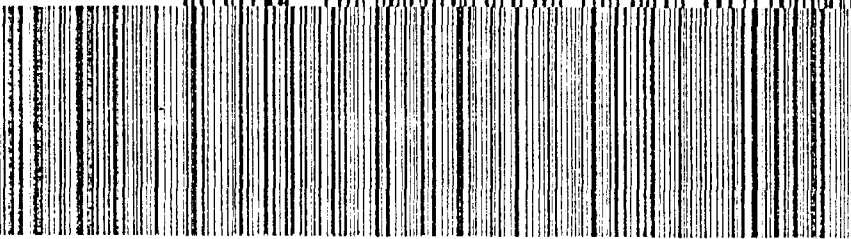


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MONTANA STATE SENATE

SENATOR JAMES H. "JIM" BURNETT
SENATE DISTRICT 42
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WHERE IS OUR CONSTITUTIONAL RIGHTS

Is the "New World Order" being programmed for these United States by the Congress and the United Nations. The recent U N convention the "civil rights" of the child would overturn both the federal and state laws if ratified by the Congress. Those nations that ratify this treaty would accept granting to children a list of rights, radical in nature and could be enforced with increased police powers to an already powerful bureaucracy that has powers far beyond what the general public can imagine at the present time. The treaty would also position the state as parent by transferring to the state much of the responsibility for health and needs of the child, thus further negating family values.

My concern intensifies when state sovereignty and personal civil rights are threatened or authority is being usurped by the federal government or World Order. Federal mandates take several different approaches. A state can participate in certain programs provided they follow certain guidelines and usually provide matching funds. In some instances the state must enact laws that would enable certain programs to be implemented and in some instances the federal program will just be implemented without state participation.

It is a real concern when the attitude of Congress begins to develop the mentality and desire to enforce and usurp the sovereignty of the state and the civil rights of it's citizens in the theory that it is the government's obligation to care for all citizens from the cradle to the grave. This can an will bankrupt our country's morality, financiality and creatively. We still have a certain amount of sovereignty in the state as guaranteed by the constitution if we have the fortitude to resist the encroachment of the federal agencies. we can determine our own standards.

One mandate I've followed very closely is the requirement of PL 96-272 which for all practical purposes caused the creation of the "Department of Family Services". As you will see this Department was intended to keep families together and should the need be, place children in foster care and protected from abusive situations. Abuse is a crime whether child or adult and the abuser should be criminally charged (but not in Montana).

In the last six months I have written both the Director of DFS and the Governor in regards of what I believe is a Department out of control. A petition from Fergus and Ravalli County citizens asking the Governor for an outside investigation of the DFS for what they feel is wrong doing by personnel of that Department or possibly from some other responsible official of government. I have also in this period of time requested two different district judges for a grand jury investigation and have received no response

The Lewistown incident involving Agness James is a good example why a investigation by and outside source is of such a great need. Not only should the investigation be of this incident but should be broad enough to cover any and all complaints of wrong doing. In the Lewistown incident, there is probably other officials of government of State and County involved. the Governor rejected the suggestion, believing the judge offer protection from the wrong doing of State and County officials. I am of the opinion that there was a great wrong committed and there should be a criminal charge be made. There certainly was mismanagement and poor judgement within the Department. the support group from Ravalli County believes as I do, that not only in that area, but all over Montana there poor judgement and a lack of common sense by management over the field personnel's conduct and actions.

I don't believe anyone would not agree that there is abuse within a family that should not be tolerated and that when proven beyond a reasonable doubt, the State should intervene. But when there is a lack of integrity of the social worker, it becomes a real concern. In the many cases that have been made known to me, there is little doubt in my mind that in a large percentage of the clients of DFS that "justice has been denied". I don't believe there is one case I know of where the social worker made a courteous and friendly contact with the prospective client. The majority are treated in arrogant and degrading fashion. there seems to be no guideline the family can rely on as to how and what to expect from DFS.

If DFS really wants to add credibility to their Department they will have to clean up their act by absolute honesty in all reporting. Limit use of confidentiality to a point that would really have an effect on the client. Had the social worker discussed the Lewistown incident with the city council or elected officials of state and county, the outcome of this situation would have been very different. Likewise in many other cases many problems could be solved without ruining a family.

Getting back to how the DFS has gotten to where they are today, an Agency out of control. In 1973, just two decades ago, Congress amended the Social Security Act by passing PL 96-272 which they hoped would correct the imbalance in the Act. These corrections varied widely in emphasis and effectiveness. The implementation by the Agency resulted in a negative effect. In an effort to keep from uprooting established procedures that had already taken hold, Congress left some sections rather vague. the social bureaucrats by this time were well entrenched and enjoying their extraordinary powers and since no one in the states would risk the cutting of federal funds by blatantly ignoring the federal procedures as recommended, every state seized on the loopholes or vague expression in PL 96-272 in order to reduce their compliance to mere paperwork.

It is obvious, the 1973 law was well intended but disastrously flawed. Members of Congress failed to notice that the combination of total confidentiality, unlimited police powers and little or no judicial supervision was a one-way ticket to zeal by case workers. In past history these combinations have turned people into bigoted inquisitors and people seeking revenge when really there is no abuse. How could Congress make such errors to believe social workers with this kind of power under the

would be fair and just and caring, using common sense and not abuse the tremendous police powers granted them. The average American citizen just does not believe this Agency has this tremendous kind of powers until it happens to them or someone they know.

It goes without saying that the passage of 96-272 (Title IV) virtually discredited those people that claim that social workers would not, could not abuse their extensive powers and that a bureaucracy composed of such people would always be benign. further more, those that set up the program under Title IV were well aware that the states would be virtually helpless if the problems centered around the Constitutional provision of civil rights of the accused and to know what was said. the authors of Title IV required various manipulations to be engaged in to minimize Constitutional guarantees. What ever Congress had in mind, the net result was that the Agency was given privilege to intervene in families on suspicion and could hold family members, especially children many times incommunicado so that testimony and public awareness is withheld. They also provided the Agency with a cloak of secrecy as to the source of their information and it's contents, plus they removed the legal system from all meaningful participation in planning the case, that is, selecting what services would be offered.

I believe the sovereign State of Montana should exercise it's own constitutional right and proscribe what is right and wrong in abuse within the family. Only a socialistic nation has no civil rights for it's citizens. The present socialistic laws in the Montana Code should be changed.

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Another side of sexual abuse

False memory syndrome is source of concern

By PAT RHODES

There is a growing concern among psychiatrists in America today regarding what many of them are referring to as "false memory syndrome" and a foundation has been established to help those who have been hurt by the problem.

"While our awareness of childhood sexual abuse has increased enormously in the last decade and the horrors of its consequences should never be minimized, there is another side to this situation, namely that of the consequences of false allegations where whole families are split apart and terrible pain inflicted on everyone concerned," according to an introduction to a publication printed by the FMS Foundation in 1991. "This side of the story needs to be told, for a therapist may, with the best intentions in the world, contribute to enormous family suffering."

FMS can happen to anyone, especially if certain elements are present, according to the foundation. A patient is well on the way to suffering from FMS if he or she goes to a therapist who already assumes that most patients have been sexually abused in childhood and if the therapist believes that most memories of abuse are repressed. If the

patient reads books that make the same assumptions or has joined a group made up of individuals (usually women) who all believe they have been sexually abused and tell their horrible stories.

Patients with suggestible personalities are more susceptible to FMS as they are if they are led to believe by therapists and books that healing can take place only when abuse is recognized and the perpetrator identified, according to the foundation.

"Here are. It can happen to you. Accusations of child sexual abuse based on repressed memories that are decade-delayed discoveries are running rampant — an epidemic is emerging. This is the mental health crisis of the decade — if not of the century," foundation information states.

Remembrance of things past can be a "mysterious process, with realities and myths blending into a vivid picture," according to

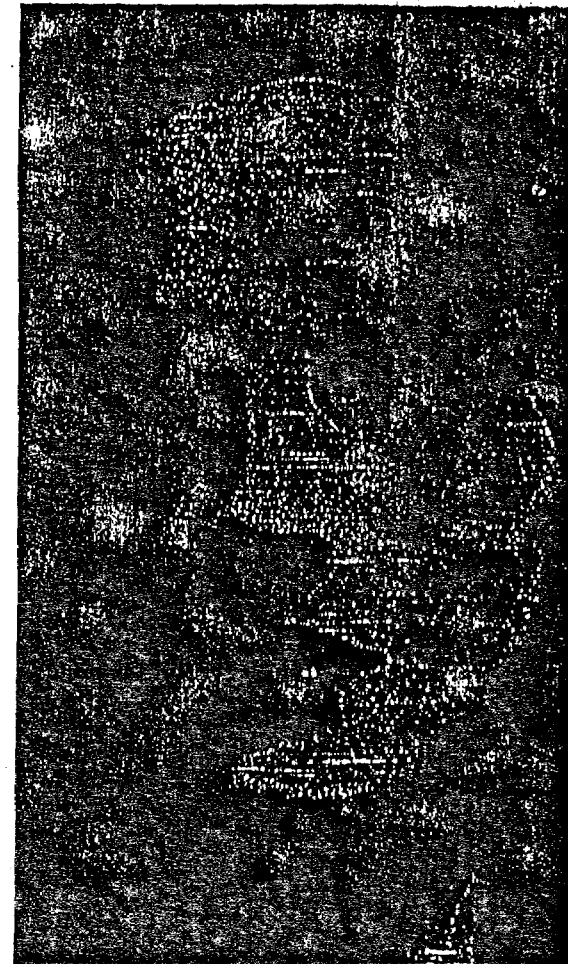
a 1991 Time Magazine article on FMS. "People — not to mention juries — place unwavering trust in the human ability to recall events, especially those that have had a strong emotional impact," the magazine story said. But such confidence is often misplaced. "Our memory is not like a camera in which we get an accurate photograph," says psychologist Henry Ellis of the University of New Mexico.

"Memory integrates the past with the present: desires,

See Abuse, page 5

"These critics liken the wave of such cases to the hysteria and false accusations of the Salem witch trials."

Writer Daniel Goleman



Attn: Senator Jim Burnette

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(2)

Montana: The Last Best Place?

In their fiscal year 1992, the Montana State Department of Family Services removed over 3300 children from their homes and placed them in state funded foster homes. With the state child population less than 180,000, this raises some very disturbing questions. Coupled with the fact that Montana, listed among the lowest states in crime and population, is ranked 27th in the nation in reported child abuse cases. Is this a state of child abusers and molesters? Or is this a state whose children and families are pawns in a political power game?

In 1992, San Antonio, Texas, 12th largest city in the nation, with a population comparable to the state of Montana, reported a child population of over 360,000 - twice Montana's child population. Their Department of Family Services investigated 8,302 cases of reported child abuse involving almost 13,000 children. With the 6th highest crime rate in the nation, they 'constitutionally' - in accordance with due process of the law - substantiated 3,524 cases of abuse, involving 5,414 children. Yet they only removed 945 If, as the Montana State Department of Family Services claims - that they are 'about average' in the percentage of children removed from the home - then according to these 'average' statistics, DFS had to have investigated 29,057 cases, involving 44,674 children, finding 12,334 cases of substantiated abuse involving 18,949 children.

	<u>Montana</u>	<u>San Antonio</u>
Total Population	@800,000	@873,000
Child Population	@189,000	@367,000
* Cases Investigated	29,057	8,302
Children involved	44,674	12,764
Cases substantiated	29,057	3,524
Children involved	18,949	5,414
Children removed	3310	945
Removal rate	3.6%	.43%
Foster care budget	16+ million	7 million
Total Budget	101 million	40 million

According to these statistic, almost 20% of families with children in the state of Montana could fall suspect through investigation by the Department of Family Services. The question again: is this a state of child abusers and molesters? Or is this a horrible example of a department out of control; a department that stands alone in it's dealings - free to operate beyond the safeguards guaranteed by the Constitution of The United States? In America, could you be removed from your home and placed under confinement for an indefinite amount of time, unaware of the charges against you and powerless to seek recourse? Of course not. Unless you are dealing with the Montana State Department of Family Services. Then the freedoms and rights that this country were built upon are lost. Is Montana truly the last, best place? Not if you love your family.

January 25, 1993

Senator Jim Burnett
P. O. Box 20
State Capitol
Helena, MT. 59620

Dear Mr. Burnett:

This letter is written in support of your presentation on Senate Bill 41.

Our family has been a victim of DFS. Until it happens to them or someone they know, the public remains unaware of the power of this department and how it is destroying families. I believe it is time that some control is placed on this department and the people are given some rights. Whatever happened to "Innocent Until Proven Guilty"? In no way should parents stand accused and children be removed from the home, strictly on hearsay with no evidence and no investigation. It is now coming to light, not only in Montana but throughout the United States, just how much power agencies such as this have been wielding against innocent people, who have had no recourse. It is not unlike having the Gestapo appear at your door.

People employed by this agency are not above fabricating lies and then compounding them, with the victim never having access to where this information originated and without DFS ever having to supply proof. Instead of trying to keep the family intact and act in a supportive manner, they are known to pit child against parent, parent against child and parent against parent. They believe that they can rip families apart and then later bring them together and everything can be "better than it was before." Once this happens to a family, the scars are carried forever and the family is never the same again.

From our experience, I can verify that you are correct in the information that you are presenting. Safeguards must be placed to protect all members of a family. Families must have the opportunity to be protected from being wrongfully destroyed by the State as a result of mistakes, which from my observation, are tipping the scales on the opposite side of justice. You are right about an industry fostered by DFS referrals. Too many people are in the pockets of DFS. Also, I believe the system is corrupt in its placing of foster care. In our case, the "foster family" happened also to have one member employed by DFS--"double dipping", if you will. Parents and other family members should not be denied the right to see their children. Being removed from the home is traumatic enough without adding the burden of not being able to speak to those people who love and care for them the most. Any

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questioning of the children, most emphatically, should have a third party present and a transcript of that meeting available. Wronged parents are being denied the right to defend themselves.

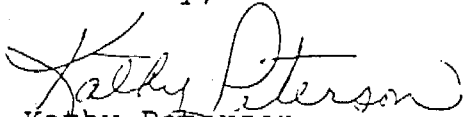
The system as it exists is an outrage! We appreciate the opportunity to speak out and see legislation enacted to correct this growing problem. If it can keep one family from being destroyed, it will be well worth the effort.

Included with this letter is some information that might be helpful in showing how psychology professionals are perpetuating these problems.

Any information on the progress of SB41 would be appreciated.

Thank you, Mr. Burnette, for addressing this most important matter.

Sincerely,



Kathy Peterson
500 So. 6th St.
Hamilton, MT 59840

Senator James Burnett
Montana Legislature
State Capital
Capital Street
Helena, MT. 59620

2-2-95

Dear Senator Burnett,

Please accept this letter as a written testimony and endorsement for Senate Bill 206.

This bill clears the air of misleading intentions on how to protect our States children. By the laws that are intended to provide safety and the well being of abused children, the bill shows a conscientious and moral effort and obligation to maintain a healthy family unit for children. It provides the family and the various agencies that may be involved with a guide to maintain and protect everyone's civil rights.

Although, I personally have not been subjected to the trauma of having my children placed into the court and foster care system due to abuse or endangerment, myself and my girls still have been affected by the disregard for family rites my friends and fellow families have had to endure in this state. I see and my daughters see, the pain and anger and mistrust brought on

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by the communities and state's obliviousness to the children's needs as well as the families. And what disturbs me the most is what seems to be the absolute dictatorial power of the Dept of Family Services.

I realize the enormity of caring for children, especially those who are abused is an overwhelming task. But I feel we must not let agencies or "good intentioned" citizens take it upon themselves solely to dictate the outcome of our children's welfare.

It is with these feelings that I endorse Senate Bill 206.

Thank you very much

Gail Jacobson
312 14th Ave. W. #206 A
Polson, MT. 59860

1 Frank B. Fitzgerald
2 412 Hallowell Lane
3 Billings, MT 59101-5011

4 Senator James H. Burnett
5 Route 1 Box 4460
6 Luther, MT 59051
7 406-446-2489

December 2, 1994

8 Dear Senator:

9
10 Congratulations on your re-election to the state senate.
11 Please note my new address. It is the same house but a new
12 house number.

13 I received your letter of November 15th and whole-heartedly
14 endorse your letter.

15
16 As I said I would, I did file my Specific Human Rights
17 Petition with the Inter-American Commission on Human Rights of
18 the Organization of American States. I can make available an
19 unabridged copy if you desire one. As Exhibit 6, I included,
20 Richard Wexler's book, "Wounded Innocents". In Chapter 11,
21 Wexler has recommendations of interest.

22 I also filed my General or Collective Human Rights
23 Petition, to represent others, in which are included many
24 exhibits of articles and transcripts dealing with Rights of the
25 child and State agencies including the LA foster care scandal.

26 I have stated to the Commission I was presenting the
27 experiences of many persons named and unnamed in the articles
28 and transcripts as my representation. That included the Waco
Massacre of innocent children and the murdered children in LA
foster care. I also included 3 video tapes. One deals with the
foster care murder of Jesus Castro in LA. Another deals with
the Nazi "Lebensborn" program I have suggested is being copied
here in the USA and exported to other members of the OAS. The
3rd tape is about black market babies.

I have suggested the USA has a very real image problem of
Human Rights of children and their families when the State
interferes.

I am enclosing a copy of my recommendations to the
Commission for its beginnings of offering the US Government
friendly conciliation, not hostile confrontation.

Your suggest of "Beyond a reasonable doubt" is by far the
most fair standard to aim for. "Preponderance of the evidence"
is purely a civil procedures standard, whereas, "beyond a
reasonable doubt", is a criminal procedures standard. The
involuntary termination of Parental Rights should be a criminal
proceeding with Rights of trial by jury, to counsel, discovery,
visitation and a cooperative Guardian Ad Litem until the parent
is proven guilty of some crime against the child. The Guardian
Ad Litem duties should by statute include his guarding Rights
of his client, the child, from encroachment by the State until
both parents are proven guilty. If only one is proven guilty

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1 then the other parent should not be discriminated against by the
2 court, the agencies, the Guardian Ad Litem, or the State.

3 I believe in returning fundamental Family Human Rights to
4 the family where it belongs. Legislation which prevents the
5 State from being a parent, parens patriae, must be passed to
6 over-ride Montana's Supreme court decisions which so say the
7 State is a parent.

8 The "beyond a reasonable doubt" is the standard used in USC
9 Title 25 dealing with termination of Indian parents in federal
10 courts--so why not all others--by amending MCA Title 41, Chapter
11 3, the abuse, neglect and dependency provisions for use in state
12 courts.

13 I do have many more recommendations based upon my extensive
14 studies and on personal experience. If I could just reach the
15 necessary forum. I did ask the Commission to hold hearings and
16 issue summons to appear and bring documents. I suggested
17 somewhere in Montana, Texas, and LA.

18 Yours sincerely,

19 *Frank B. Fitzgerald*

20 Frank B. Fitzgerald
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24
25
26
27

1 Frank Boring Fitzgerald, Petitioner
2 412 Hallowell Lane
3 Billings, MT 59101-5011 USA
4 Phone: 406-259-5866

Copy

5 BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
6 OF THE ORGANIZATION OF AMERICAN STATES
7 Washington, D.C. 20006 USA

8 FOR ALLEGED VIOLATION OF FUNDAMENTAL HUMAN RIGHTS, AND,
9 FOR ALLEGED "CRIMES AGAINST HUMANITY"

10 Case Number _____

12 FRANK BORING FITZGERALD, Petitioner,)
13 and,) RECOMMENDATIONS
14 United States of America, et al,)
15 Respondents)

17 RECOMMENDATIONS FOR THE COMMISSION TO INVESTIGATE, STUDY,
18 COMMENT, AND SUGGEST TO THE UNITED STATES GOVERNMENT AS A
19 POTENTIAL RESOLUTION TO PETITIONER'S HUMAN RIGHTS PETITION:

20 COMES NOW Petitioner, Frank Boring Fitzgerald, in support
21 for his Human Rights Petition, makes the following:

22 I

23 RECOMMENDATIONS

24 1 Petitioner recommends to the Commission it investigate and
25 study his Fundamental Family Human Rights questions raised in his
26 Petition and then formally or informally offer to the United
27 States Government a set of proposed solutions to those questions,

1 as peers-to-a-peer.

2 2 All serious Human Rights questions need answers and Peti-
3 tioner, because of his experience, has suggestions for answers
4 to problem areas of Family Human Rights in the USA. Most, if not
5 all, of Petitioner's Human Rights questions have arisen over the
6 years as a direct or indirect result of failure of USA common law
7 and failure of the statutes upon which common law was based to
8 uphold Human Rights.

9 3 To exact respect for fundamental Family Human Rights
10 requires a bold new approach to systems of dispensing family
11 justice because Petitioner, and others, have gotten no where
12 within the political system. No one has either the time or can
13 devote the effort to put into effect remedial recommendations.
14 Petitioner has been to all 3 branches of the US government and
15 Montana government with his pleas for change all the while his
16 Family Human Rights were being destroyed by the State.

17 4 If one suggests making changes in a system, one must be sure
18 changes are both needed and rightfully accomplished, consistent
19 with a minimum impact upon society. Change is necessary.

20 5 Petitioner suggests, not one iota of change needs to be made
21 in the US Constitution in order to effect what he considers are
22 a necessary and desired change in procedures of dispensing family
23 services and justice in the USA so as to comply with Human Rights
24 provisions of international law to which the USA is signator.

25 6 One example of necessary change flows from the present US
26 Constitutional mandate: The US Supreme Court has,

27 "...appellate jurisdiction, both as to law and fact, with
28 such exceptions, and under such regulations as the Congress
shall make". Article III, Section 2, US Constitution.

1 But the principle problem is, Congress allows the "except-
2 tions"; Congress allows the US Supreme Court to, by discretion,
3 summarily deny 90% of those cases coming before it without the
4 Court ever really giving due consideration to and acting upon
5 them. Their disposal actions are tantamount to a lottery. A
6 case of utmost importance to all citizens can be simply sup-
7 pressed in summary denial.

8 7 If Congress believes the US Supreme Court is overloaded with
9 cases coming up on appeal, Congress ought to expand the one US
10 Supreme Court into departments, or chambers, so the one Court
11 can judiciously dispose of 100% of cases coming before it and
12 thereby comply fully with the mandate of the US Constitution in
13 regards the Constitutional requirement of appellate jurisdic-
14 tion.¹

15 8 Rejection and suppression of appeals in summary denial are
16 neither fundamentally fair nor attributable to what could be
17 called an "independent judiciary" specified in international law.
18 That is, the Court is biased towards, and has a propensity to,
19 and has discretionary power to, suppress the 90% of cases, some
20 of which from time to time involve questions of fundamental Fami-
21 ly Human Rights², and "Civil Rights" {Human Rights} in general.

22 9 Congress has the Constitutional authority to expand the US
23 Supreme Court into departments or chambers through appropriate
24 legislation signed by the President, doing so it would amend
25 United States Code Title 28. By further amending Title 28,
26 Congress may direct the Court to handle all appellate cases in
27 the various departments or chambers.

28 10 Congress should create the ability of citizens to bring

1 "Civil Rights" suit in federal district court they presently
2 cannot do, in citizen attempts to exhaust their domestic
3 remedies, against State entities, and/or private entities, and/or
4 persons who act for and in behalf of the State in the state of
5 residence by doing seven things:

6 a First, Congress should specify, and affirm, by joint resolu-
7 tion of both houses, the various Civil Rights Acts, adopted over
8 the years since the Civil War, are intended by Congress to allow
9 citizens to implement the First Amendment to the US Constitu-
10 tion, which prohibits Congress from making laws abridging the
11 right of the people to petition the government for a redress
12 their grievances, by specifying in the joint resolution, it is
13 the intent of Congress a citizen's "Civil Rights Complaint" may
14 be filed in federal district court against alleged violators of
15 Civil Rights and to include State entities, and/or private
16 entities, and/or persons who act for and in behalf of the State
17 of the state of residence without having to first file in state
18 court³; the Congress should specify, and affirm, in the joint
19 resolution, the various Civil Rights Acts are not intended to
20 convey a due process right of the State to treat Civil Rights as
21 merely or solely "property interest rights" but as Human Rights
22 when it comes to a citizen attempting to exercise Civil Rights
23 but is confronted by a State challenge in court⁴.

24 b Second, the joint resolution should state it is the intent
25 of Congress, "Civil Rights" are Human Rights, reserved in the
26 people by the 9th and 10th Amendments to the US Constitution not
27 requiring laws of the legislatures or decisions of courts or
28 decrees of the executive to make such Rights valid and effec-

1 tive. This would be the USA way of implementing and giving
2 recognition and credence to the many Human Rights provisions of
3 international law respecting those Rights as fundamental to which
4 conventions the USA is a signator.⁵

5 c Third, Congress should amend USC Title 42, Section 1983, the
6 Civil Rights Act, to implement the meaning and intent of the
7 Joint Resolution. That would include amending the Act by
8 changing the word "person" to include a State entity, a private
9 entity, and a person, and specify no person, State entity,
10 private entity, has implied, partial, quasi-, total, or qualified
11 immunity from Civil Rights suit. In a Civil Rights suit
12 against a person and/or State entity and/or private entity, the
13 burden of proof lies with Complainant in a pretrial hearing
14 solely intended to more closely define legal questions present-
15 ed; jury trial would be a matter of right by demand of Com-
16 plainant⁶; a Civil Rights suit filed by a citizen ought to be a
17 civil suit whereas filed by the State against a citizen ought to
18 be a criminal suit; a civil suit filed by a citizen joined by
19 the State against another citizen ought to be a criminal suit.

20 d Forth, Congress should also amend USC Title 42, section
21 1983, to include a time limitation:

- 22 i which exempts concealed Civil Rights violations from a time
23 limitation until the discovery is complete;
- 24 ii which is begun with each and every violation event which can
25 be proved, with older violations permitted into evidence to show
26 propensity;
- 27 iii to begin running when enough proof can sustain prosecution
28 in a court of law, and once before the court, the burden of proof

1 rests with the Complainant to prove the time-frames involved were
2 necessary;

3 iv which specifically exempts provable "crimes against Humani-
4 ty" with adequate definition thereon, from any time limitation;

5 v which specifically permits sequential litigation⁷, which are
6 each intended to exhaust remedies prior to filing a Civil Rights
7 suit, before beginning to run a time limitation⁸;

8 e Fifth, Congress should specify by amending Title 42 Section
9 1983, no penalty, punishment, or sanction can be exacted against
10 a citizen for his having filed a Civil Rights Complaint a first
11 and second time but if filed and denied twice then the denial the
12 third time should cause sanctions to be invoked. Three strikes
13 and you are out.

14 f Sixth, Congress should also amend Title 42 Section 1983:

15 i to disallow appeals by State entities of Civil Rights case
16 decisions⁹ unless the State and citizen complainants were
17 originally co-prosecutors against other citizens and/or entities;
18 this would not preclude the State filing as an amicus curiae.

19 ii to incorporate the concepts of citizens having the Right to
20 prove allegations of violations of their Civil Rights¹⁰ caused by
21 Respondents be they officials, judges, prosecutors, other
22 citizens, or State or private entities. No person, no private
23 entity, no State entity, should be allowed by color of local law
24 to work violations of Civil Rights {Human Rights} above laws of
25 the land prohibiting the violations without fear of retaliation
26 in court.

27 iii to allow citizen access to federal grand juries for invest-
28 igation of their Civil Rights Complaints in conjunction with

1 domestic Human Rights Commissions as advocates of Complainant's
2 Civil Rights in federal courts. This would not require a new
3 mandate from Congress only modification of existing mandates.

4 g Seventh, Congress should amend Title 42 to include the
5 following concepts in language of sections 670, et seq. dealing
6 with families and Child Protection Services care situations:

7 i All federal monies granted to the State and its advocates
8 in all states for restoring families and/or for maintenance of
9 CPS care situations must be monitored for compliance with terms
10 of acceptance of those monies¹¹. This presently is not adequate-
11 ly ensuring only Montana and Iowa to 70% comply. All other
12 states, including Montana, are in 0% compliance with no effective
13 federal watchdog agency on their backs to comply.

14 ii The State and its advocates must recognize, respect, and
15 protect fundamental Family Human Rights.

16 iii The State and its advocates must consider family members
17 innocent until proven guilty in a court of law.

18 iv The State and its advocates must consider any allegation of
19 parental act of commission and/or omission upon their child only
20 within the context of a criminal proceeding requiring a priority
21 one trial by jury upon a priority one indictment of a local grand
22 jury¹².

23 v At the very same time as a first Temporary Investigative
24 Authority and Child Protection Order is issued, a Guardian Ad
25 Litem shall be appointed to represent the child as an alleged
26 victim and the duty of the GAL is to guard the Rights of the
27 child from encroachment by the State or any of its other
28 advocates.

1 The GAL shall consider the parent or parents innocent and
2 work with them until proven guilty in a court trial by jury at
3 which time the GAL shall guard the child's Rights also from
4 encroachment from its parent or parents found guilty; the GAL
5 shall have access to any information, to the State and its other
6 advocates, to the child, to the parent or parents, to the court
7 but not as prosecutor or co-prosecutor for or on behalf of the
8 State or any of its other advocates, to the foster care review
9 committee, to any interested party, so as to aid in the process
10 of remedies beneficial to the family as a unit until guilt is
11 adjudged.

12 vi The State and its advocates must allow parents full dis-
13 covery through a requirement at all times to provide information
14 developed¹³ and an adequate opportunity afforded to parents to
15 dispute in a priority one foster care review committee hearing
16 established under jurisdiction of the court¹⁴ which committee
17 acts as a mediator or referee. Local court rules may need to be
18 changed.

19 vii An alleged child victim may not be removed from its family
20 by the State or its advocates for less than a criminal allegation
21 against one or both parents.

22 viii The State or its advocates may not place a removed child in
23 a CPS care situation removed from its family by more than a few
24 miles, nor giving a new name, nor giving a new religion, nor
25 withhold visitation by a parent except in suspected "crimes
26 against Humanity" alleged to have been committed against the
27 child by that parent¹⁵, then the visitation must be brief and
28 continuously monitored.

ix The State or its advocates may not remove a child from its family if only one parent is alleged to have committed a criminal action and/or inaction upon that child, and no other child may be removed at the same time who was not also alleged to be a victim¹⁶ or is alleged to be in imminent danger if left with its family.

x The alleged perpetrator must remove voluntarily or be removed by order of the court with opportunity to rebut within 72 hours;

xi The State or its advocates shall not hold a child, alleged victim of a parentally caused crime, in a CPS care situation longer than 72 hours without further order from the court based upon rebuttable evidence.

xii The State and its advocates must accept an order of priority in consideration of where to place an alleged victim child removed from its family in CPS care situation to include: relatives, godparents, friends, and neighbors or other interested parties.

xiii 72 hours after a child has been removed from its family, a petition for a writ of habeas corpus filed by or on behalf of a parent, or on behalf of a child by its Guardian Ad Litem, must be respected by the court as priority one and cannot be denied summarily by anyone in or out of court. To process, it must not require more than a few hours.

The habeas corpus filed by or on behalf of a parent takes the form, "The State and/or its advocates have my child which by Right belongs with me in my family--the State must charge me with a crime or return my child to me."

1 The habeas corpus filed on behalf of the child by its
2 Guardian Ad Litem takes the form, "The State and/or its advocates
3 have the child which by Right belongs with its family--the State
4 must charge the parent with a crime or return the child to its
5 family."

6 11 Additional recommendations are to be found in "WOUNDED
7 INNOCENTS", by Richard Wexler, at Chapter 11 "Making Changes" see
8 Exhibit 6.

NOTES TO RECOMMENDATIONS

1. An ideal example of such a departmental, or chambered, court is the Supreme Court of Costa Rica, which handles 100% of cases coming before it in the various Salas.

2. as was Petitioner's second of two appeal cases

3. This would have the effect of settling, once and for all, the various arguments and decisions of the federal courts on the federal question of the 11th amendment bar to a citizen suing their state of residence in federal district court where some courts have held it impossible and other courts have held it possible for citizens to sue their state in federal court.

4. At present in the USA, the State treats Civil Rights as property interest rights conferred upon citizens by statutes and decisions of the courts much like property rights are conferred or created by contract. Such conference of rights by statutes has the meaning in court of: the State may withdraw by challenge, rights at any time under the due process clause of the 14th Amendment to the US Constitution. This interest right concept has been in and out of the courts for well over a century and needs to be finally laid to rest by action of the Congress in joint resolution of intent and meaning.

5. At present there are no Human Rights recognized in the US Constitution as such fundamental. In practice, the US Constitution has been considered by the courts to grant powers to the legislatures to enact laws which laws recognize or grant people their Civil Rights. It must be point out to the Commission, these Civil Rights can be withdrawn at any time by whim and caprice of the legislatures without infringing the US Constitution.

6. The judge decides questions of law; the jury decides all other matters.

7. appeals would be sequential litigation

8. now the Civil Rights suit must begin as if in parallel to other kinds of litigation with no chance at sequential suits because most often the other litigation takes longer than the statute of limitations for Civil Rights cases allows

9. decided in favor of citizen complainants

10. in a federal court beyond a shadow of a doubt as the standard of evidence

11. The terms of acceptance are written into USC Title 42, Sections, 670 et seq.

12. Presently, allegations of misconduct are handled, according to state statutes, as "adversarial civil procedures" using rules of civil procedure in a court of law without benefit of a trial

1 by jury. It would not be enough to require a trial by jury in
2 a civil proceeding because, among other things, the verdict of
3 a civil trial jury does not need to be unanimous and they would
4 weigh the evidence, according to weight instructions, on basis
5 of a "clear and convincing" test. Now, in state court it is the
6 judge who weighs the evidence according to a "preponderance"
7 test. Upon appeal, the appellate court will instruct the judge
8 to use the "clear and convincing" test. The highest test of
weighing the evidence should be that used in 1st degree murder
trials, "beyond a shadow of a doubt", because we are talking
about the potential destruction of families. And, in order to
arrive at "beyond a shadow of a doubt" test will require criminal
procedures substituting civil procedures in court. Criminal
procedures required of trials to terminate Parental Rights in
some courts may require amending local court rules.

9 13. In *Richie v. Pennsylvania*, US Supreme Court, Richie was not
10 able to defend himself because the State and its advocates
11 withheld information vital to his defense. The US Supreme Court
held he was not entitled to that information. Thus Congress can
over-ride that decision and others of a similarity.

12 14. Currently, foster care review committees are closed to
13 parents.

14 15. Presently, a child is often removed from its home when only
15 one parent is alleged to cause abuse, neglect or dependency.

16 16. Currently, a child and any or all other siblings are removed
17 when only one parent is at fault. The law should specify the
18 offender parent shall be removed from the home and the children
19 left with the other parent.
20
21
22
23
24
25
26
27
28

PERSONS INTERESTED IN OR HAS BEEN EFFECTED BY THE DEPARTMENT OF FAMILY SERVICES:

NAME	ADDRESS	TOWN	ZIP	PHONE
Ascraft, Teresa	Box 1224	Thompson Falls	59873	827-3046
Assay, Donna		Frenchtown	59834	626-4558
Blake, Dorothy	7830 2 Augg Dr.	Missoula	59802	258-2864
Brown, Rick	Box 471	Phillipsburg	59858	
Buckman, Spring		Missoula	59802	251-2926
Buffington, Tim	Box 104	Miltown	59851	523-6399
Gibson, Meg	1919 Strand	Missoula	59801	251-6392
Hansen, Fred	Box 5718	Missoula	59801	251-6392
McAdams, Steve		Clinton	59825	825-6938
McDermott, Rena	5569 Cottonwood Dr.	Florance	59833	273-2527
McKinstry, Mike	Box 1172	Lolo	59847	273-6865
Rasmussen, Linda	1336 Sherwood	Missoula	59802	728-1686
Rice, Debbie	Box 908	Lolo	59847	273-3167
Rice, John	Box 5700	Missoula	59806	721-0103
Taylor, Debbie	2046-S 11 W	Missoula	59801	542-0153
Weiley, Becky	774 Milty Ln.	Hamilton	59840	363-5383
Weaver, Roxy	Box 871	Miles City	59301	
Whitelatch, Bob	300 Dearborn	Missoula	59801	549-9619
Wikstrom, Kay	740 Tenth	Missoula	59801	721-3000
Wilkenson, Mim	Box 73	St. Ignatius	59865	745-2300
Williams, Ray		Stevensville	59870	777-2873
Wilson, Gray	Box 623	Frenchtown	59834	
Wowski, Norm	1009 Palmer	Missoula	59802	543-1907
Wandau, Valinda (Ken)	838 N 5W	Missoula	59802	549-5340
Whrestensen, Bob		Lolo	59847	543-6193
				273-0820
Wersuch, Brian & Marian	305 Hilger	Lewistown	59457	538-7832
Peterson, Cathy	500 S 6th	Hamilton	59804	363-3551D
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Woodyear, Gena	2028 Custer	Billings	59102	656-7112
Witzgerald, Frank	3000 Hollowell Ln.	Billings	59101	259-5866
Warth, Kay	Box 186	Alberton	59820	626-4451D
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W Steele, Nikki &	Carl 406 5th Ave N	Lewistown	59450	538-2347D
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Vincent, Vikey	104	Fort Harrison	59636	443-2730
Peterson, Sue	219 S 8th St	Hamilton	59840	538-2347
Polpin, Norm	2012 Forest Park	Billings	59102	656-6244
Miller, Morris				
Sharon	2212 4th Ave N	Great Falls	59401	761-0482

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rgen, Kenneth E.	1831 Stoddard	Missoula	59802	543-6193
uires, Charles &	Norma Box 350061	Grantsdale	59835	
nderson, Jerry	Box 5722	Helena	59601	443-2730
rtows, Mr. &				
Mrs. Gerold	217 Ave E	Roundup	59072	323-2533
st, Bud &				
Vonnie	410 N 33rd St.	Billings	59101	252-2071
ugh, Richard	208 Caroline Rd	Roundup	59901	756-6529
ndou, Kenneth &				
Valinda	838 N. 5th W	Missoula	59802	
ark, Richard	Box 3566	Missoula	59806	728-1475
alledaux, M.W., Sr.,				
15420 Teyer Rd #3		Lolo	59847	273-0196
ter, Valorie	1814 Hauser	Helena	59601	443-6331
re, Penny		Lewistown	59450	538-5128& 538-5782
atham, Rosetta		Park City	59063	628-2991
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nderson,				
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ed Firm,				
Pascal	Box 3228	Missoula	59806	
isher,				
John & Eva	RR #1 Box 4	Joliet	59041	
orris, Bob &				
Yvonne--3208	Maser Dome Rd	Silesia	59041	
amian,		San Diego,		
Marcus	3030 Market St	Calif.	92101	619-236-0994
ustad	Riverview C	Great Falls	59044	
hite,				
Catland	Box 350008	Grantsdale	59385	363-5383
iley,				
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lows, Charles		Sun River	59483	
lows, Mae		Sun River	59483	
ry, Judy		Sun River	59483	
illis, Vivian		Sun River	59483	
ler, Brenda		Sun River	59483	
urrey, Ethel		Sun River	59483	
der, Hudd		Vaughn	59487	
cello, Colleen		Sun River	59483	
ker, Trish		Sun River	59483	
roechl, Evan S.		Fort Shaw	59401	
gherty, W. A.		Great Falls	59401	
sen, Cliff		Vaughn	59487	
f, Tim		Sun River	59483	
roechl, Eric		Fort Shaw	59443	
nelly, Faye		Sun River	59483	
ler, Peggy		Vaughn	59487	
wn, Candi		Vaughn	59487	
ly, Sharon		Sun River	59483	
kman, James		Sun River	59483	
es, Jamie		Vaughn	59487	
ing, Andy		Sun River	59483	
llips, Jason		Sun River	59483	
ling, Al		Sun River	59483	
co, Connie		Sun River	59483	
ling, Ruby		Sun River	59483	
erson, Cliff		Sun River	59483	
ibury, Ray				
c, James R.		Sun River	59483	
es, Keith				
y, Carol		Sun River	59483	
, Myra		Sun River	59483	
is, Alan M.		Fairfield	59436	
ggs, Rita		Vaughn	59487	
se, Duane E.		Cascade	59421	
se, Fran		Cascade	59421	
son, George				
all, Shirley		Great Falls	59401	
er, Russ		Belt	59412	
endon, Jodi		Great Falls	59401	
son, Maxine		Vaughn	59487	
son, Maryanne		Vaughn	59487	
pson, George		Vaughn	59487	
sen, Denni		Cascade	59421	
sen, Mary		Cascade	59421	
z, Mike		Great Falls	59401	
, Casandra		Great Falls	59401	

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Keiser, Starla	927 7th Ave. N.W.	Great Falls	59401	
Hover, Jeffery	6081/2 Central Ave#310	Great Falls	59401	
Baker, Edyth	602 Park Dale	Great Falls	59401	
Schawier, Charles	66 St. So. Apt. 418	Great Falls	59401	
Coon, Karyne	605 7th Ave. North	Great Falls	59401	
Coon, Charles		Great Falls	59401	
Matschenlade, Daisey	1604 Aoasis Ct.	Great Falls	59401	
Linef, Harvey,	903 8th Steet	Great Falls	59401	
Linef, Raylene		Great Falls	59401	
Marsh, Ray	4600 4th Ave.	Great Falls	59401	
Van Gorden	P. O. Box 533	Valier	59486	
Horrall, Arthur M.	723 Broadway	Denton	59433	
Baker, Raymond	P. O. Box 244	Stanford	59479	
Uhers, Milton	Route 1-Box 62	Coffee Creek	59424	
Bolstad, Alvin				
English, James B.	P. O. Box 148	Roy	59471	
Finch, William	P. O. Box 539	Roundup	59072	
Stapleton, Wayne	P. O. Box 533	Harlowton	59036	
Peccia, John	P. O. Box 511	Harlowton	59036	
Holze, Paul	P. O. Box 236	Starburst	59036	
59479Fulton, Clarence	P. O. Box 436	Harlowton	59036	
Morley, Loren	P. O. Box 652	Harlowton	59036	
Ballard, Vernon	P. O. Box 13	Lavina	59046	
Burger, Jack L.	P. O. Box 3	Lavina	59046	
McCanas, Arthur	P. O. Box 285	Harlowton	59036	
Patterson,	P. O. Box 1017	Denton	59430	
Krause, Harold	P. O. Box 666	Harlowton	59036	
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Perry, Jack	R.R.	Judith Gap	59452	
Broch, James	P. O. Box 54	Judith Gap	59453	
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Peterson, John	4421 Stone St.	Billings	59101	
Hruska, A. L.	2526 Miles Ave.	Billings	59102	
Smith, R.	928 W. 4th	Laurel	59044	
McComos, Larry M.	3231 Central Ave.	Billings	59102	
Loyming, Sam	Star Rt. Box 30	Belfry	59008	
Vanderburg, Jim	44 Silver (?)	Billings	59102	
Childers, Don	1235 Custer Ave.	Billings	59102	
Frey, Ralph M.	2213 Elizabeth St.	Billings	59102	

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ng, LeRoy L.	P. O. Box 1073	Big Fork	59911	
man, Harry L.	728 - 8th St. W.	Kalispell	59901	
rr, Ralph T.	862-4807	Whitefish	59937	
rnard, David H.	149 Ferndale Dr.	Big Fork	59511	
lters, Gordon R.	130 Yarrow Ave.			
	P. O. Box 1965	Whitefish	59937	
uzof, Richard E.	804 - 8th Ave. W.	Kalispell	59901	
hmidt, Vivian	22 Meadowlark	Kalispell	59901	
rdhaper, Darrell	621 Sapphire Ave.	Billings	59105	
e g P. ?	Montana Vets.Home	Columbia Falls	59912-0256	
ush, Ronald	12157 Hy 212	Charlo	59824	
adows, Robert	General Del.	Charlo	59824	
ughty, Phillip H.	P. O. Box 332	Augusta	59410	
sano, John R.	P. O. Box 145	Augusta	59410	
ompson, Bruce O.	P. O. Box 89	Geraldine	59446	
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u?...Glen C.	P. O. Box 95	Geraldine	59446	
chison, Russell M.	Box 242	Geraldine	59446	
nders, Gordon H.	Box 331	Geraldine	59446	
aks, Tom	Rte 1 -Box 160	Fairfield	59436	
ockinger, Gil	3020 5th Ave. So.	Great Falls	59405	
assen, Verne P.	1808 32nd St. So.	Gréat Falls	59405	
llick, C.F. Cholly				
	8th - 14th St. So.	Great Falls	59405	
aulding, Ronald	P. O. Box 154	Power	59468	
own, Dean B.	P. O. Box 308	Cascade	59421	
ownwell, Robert	P. O. Box 463	Dutton	59433	
lerson, James	P. O. Box 318	Power	59468	
cke, Emil G.	P. O. Box 175	Power	59468	
ultz, William	P. O. Box 246	Power	59468	
amer, Otto	Rte 1 Box 127	Fairfield	59436	
chter, William	P. O. Box 201	Choteau	59422	
ody, Roy	Rte 2 Box 136	Choteau	59422	
zel, LeRoy R.	Rte 1 Box 31A	Fairfield	59436	
odmundson, Darrell				
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lly, Diana	36 Willington Ln.	Cascade	59421	
kins, Paul K. (?)	221 36 St. So.	Great Falls	59404	
Jess	256 22nd Ave NW	Great Falls	59405	
l, Ardell		Fort Shaw	59443	
ifner, Dolores		Great Falls	59401	
ifner, Bob L.		Great Falls	59401	

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ahn, Gene		Lincoln	59639	
ahn, Carol R.		Lincoln	59639	
affner, Alan G.		Great Falls	59404	
ohnson, Ella		Great Falls	59401	
sen, Edith		Great Falls	59401	
ohn E.		Great Falls	59401	
crutosky, Boyce A.		Sun River	59483	
avid Rogstad		Sun River	59483	
oman, Emma F.		Sun River	59483	
uinsey, Joan		Vaughn	59487	
ogstad, Marcy		Sun River	59483	
ohnson, Donald		Vaughn	59487	
eterson, Cliff		Vaughn	59487	
ozder, Steven		Vaughn	59487	
ecrist, Robert M.		Great Falls	59401	
ipper, Rifer		Dupuyer	59442	
isler, Ruby		Dupuyer	59442	
reen, Karen		Sunburst	59482	
eBolt, Georgann		Vaughn	59487	
eBolt, Elmer R.		Vaughn	59487	
nderson, Lyla		Vaughn	59487	
eyer, Dan J.		Great Falls	59401	
nderson, John W. (Bill)		Choteau	59422	
goda, Iona		Choteau	59422	
bermatte, Wilbur R.		Choteau	59422	
ummer, Ramona		Choteau	59422	
uite, Jesse		Choteau	59422	
ainer, Dorothy		Choteau	59422	
nderson, Sue		Choteau	59422	
lone, Sr. (Jesse)		Choteau	59422	
hroder, Frieda R.		Choteau	59422	
rickland, Julia		Vaughn	59487	
erling, Krystina		Sun River	59483	
eele, H. Larry		Great Falls	59401	
hmidt, Gideon		Fairfield	59436	
iesen, Henry D.		Simms	59477	
af, Ervin D.		Fairfield	59436	
lenda, James C.		Fairfield	59436	
ffington, Donald J.		Helena	59601	
mburton, Donald		Browning	59417	
nes, Rodney D. 2919 4th Ave. So.		Great Falls	59405	
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NAME	ADDRESS	TOWN	ZIP	PHONE
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smay, David M.	Box 63	Fort Shaw	59443	
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asmoda, Dick		Sun River	59483	
enger, Daisy		Fairfield	59436	
lson, Margaret		Fairfield	59436	
onen, Amelia		Fairfield	59436	
ink, Ruth		Fairfield	59436	
ike, Donna		Fairfield	59436	
ing, Karen		Fairfield	59436	
jelsrud, Robert	P. O. Box 606	Lincoln	59639	
rescott, Gordon	P. O. Box 787	Lincoln	59639	
isfeldt, Otis				
obbins, Ken	585 Highland	Helena	59601	
airclough, Mike		Helena	59601	
avoy, Walter		Fort Shaw	59443	
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elly, Larry		Fort Shaw	59443	
an't distinguish name		Fort Shaw	59443	
Schrock, Robert		Fairfield	59436	
alston, Terri A.		Fort Shaw	59443	
ffelberg, Brenda		Fort Shaw	59443	
reiting, Carol		Fort Shaw	59443	
lsen, Norma		Fort Shaw	59443	
iller, David L.		Fort Shaw	59483	

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DATE 2-6-95
X SB 206

Paul Befumo, JD, Pres.
Robert G. Steele, JD, CPA, V.P.

January 27, 1995

FROM: Paul Befumo

TO: Senator Burnett
Senator Simpkins
Senator Grinde
Senator Baer
Senator Alkstad
Senator Beneuit
Senator Clark

Barnett

RE: S.B. 206

Dear Senators:

I would like to express my gratitude to you for sponsoring S.B. 206. I have been involved in mostly futile attempts to help people abused by DFS for the past several years. I would appreciate if you would notify me of any public hearings on your proposed bill.

I have accumulated a voluminous amount of evidence of DFS abuses, which I am more than willing to share with you. I am enclosing two documents which I feel support the contention that DFS, the county attorneys, and courts have been depriving Montana parents of their rights:

a) The first is an order written by Judge Harkin of Missoula in which he asserts the court's right to take children from their parents under "temporary" authority ("temporary" means until they reach age 18, according to the Montana Supreme Court), and further asserts that the only process required is a showing of probable cause to conduct an investigation. (p. 5, ¶ 2). Harkin asserts that a parent need never be given an adjudicatory hearing at which to challenge allegations of abuse. The Montana Supreme Court has endorsed Harkin's assertion.

b) The second is an affidavit from a DFS social worker in which speaks for itself. Two days after the affidavit was filed in case No. 94-545, the affiant was interrogated in a threatening manner by Anne Gilke and Richard Kirstein, two DFS henchmen directly under the supervision of Hank Hudson, head of DFS. The day after the interrogation, Ms. Kirchner was suspended from her DFS job without pay.

1 Douglas G. Harkin, District Judge
 2 Department 4
 3 Fourth Judicial District
 4 Missoula County Courthouse
 5 200 West Broadway Street
 6 Missoula, MT 59802-4292
 7 (406) 523-4774

FILED AUG 23 1994

KATHLEEN D. BREUER, Clerk
Kathleen D. Breuer
 Deputy

8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 IN THE MATTER OF DECLARING) Cause No. J-2689 / 83
 10 CHRISTOPHER FOWLER and)
 11 JONATHAN FOWLER,) MEMORANDUM AND ORDER
 12 YOUTHS IN NEED OF CARE.)

13 This matter comes before the Court upon William Fowler's
 14 motions: (1) to dismiss the youths in need of care proceedings
 15 or, in the alternative, to set an adjudicatory hearing pursuant
 16 to §41-3-401(2), M.C.A.; (2) to implement a treatment plan; and
 17 (3) to prevent the State of Montana from financing the divorce/
 18 custody proceedings. All parties have briefed the motions and
 19 the matter is deemed submitted and ready for ruling.

20 BACKGROUND

21 This action was initiated on June 14, 1991 when the State
 22 of Montana petitioned the Court for temporary investigative
 23 authority and protective service. The petition and the
 24 affidavit provided by a social worker for Department of Family
 25 Services (hereinafter, DFS) alleged abuse within the meaning of
 26 §41-3-102, M.C.A. Judge Jack Green found probable cause to
 27 believe that the children were youths in need of care and in

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1 need of temporary investigative services, and he granted
2 temporary investigative authority to DFS. An order to show
3 cause hearing was scheduled for June 24, 1991. Both counsel for
4 DFS and Mr. Fowler appeared and advised this Court that a
5 stipulation had been reached. Thereafter, this Court issued a
6 restraining order granting DFS temporary investigative authority
7 on July 17, 1991. Mr. Fowler was restrained and enjoined from
8 any personal or telephone contact with the two minor children
9 or their mothers.

10 Thereafter, numerous motions were filed by the State of
11 Montana and Mr. Fowler. There have been numerous show cause
12 hearings upon the motions. A brief chronological review of the
13 course of this case reveals the following:

- 14 (1) On July 26, 1991, the State moved for
15 clarification of psychological exams. On July
16 29, 1991, the Court ordered that either Dr.
17 Scolatti or Dr. Walters were to complete a
18 psychological evaluation of Mr. Fowler.
- 19 (2) On August 15, 1991, Mr. Fowler moved for
20 supervised visitation pending the examinations.
21 On August 21, 1991, the State moved to approve
22 placement of the youth and to withhold
23 visitation until the visitation was complete.
24 On August 22, 1991 this Court heard and granted
25 the State's motion for placement of Chris Fowler
26 with his natural mother, and granted the State's
27 motion to withhold visitation. The Court denied
Mr. Fowler's motion to move Chris Fowler to
foster care in Missoula. The Court ordered a
supervised Christmas visitation. During this
hearing, the State moved the Court to take
judicial notice of a transcript from a divorce
proceedings by Dana Fowler in which she detailed
abuse at the hands of Mr. Fowler. The Court
heard and granted this motion.
- (3) On January 22, 1992, Mr. Fowler moved again for
supervised visitation. On February 13, 1992 he
filed a motion to dismiss the proceedings

1 because Dr. Scolatti had not finished his
2 report. In a memorandum and order dated March
3 5, 1992 this Court denied that motion.

4 (4) Dr. Scolatti completed his psychological
5 evaluation on March 27, 1992. He recommended
6 that: (a) Mr. Fowler have no unsupervised
7 contact with the children, (b) that the custody
8 of Chris Fowler be transferred to his natural
9 mother, Janet Schofield, (c) that Chris Fowler
10 was in need of counseling, and (d) that Mr.
11 Fowler needed long-term counseling with a
12 therapist of his choice to work on issues of
13 anger management and parenting skills.

14 (5) On August 19, 1993, Mr. Fowler moved to set
15 visitation and to obtain a second opinion of Dr.
16 Scolatti's psychological evaluation. In a
17 hearing on September 20, 1993, this Court
18 granted the motion for a second opinion, ordered
19 that the State disclose all raw test data used
20 by Dr. Scolatti in his psychiatric evaluation,
21 and ordered that Dr. Walters should formulate a
22 visitation plan.

23 (6) In a hearing scheduled October 4, 1993, the
24 Court granted Ms. Schofield and Ms. Sutherland's
25 entry into this case. The Court denied Mr.
26 Fowler's motion for visitation during interviews
27 to be conducted by Dr. Walters. The Court
ordered Mr. Fowler to obtain a written proposed
treatment plan in regard to visitation from Dr.
Walters.

(7) On November 15, 1993, Mr. Fowler again moved for
temporary visitation. After a hearing, the
Court issued an order denying this motion based
upon: (a) the remaining unproven sexual abuse
allegations, (b) the potential for damage that
continued to exist with unsupervised visitation,
(c) the recent evaluation of Chris Fowler by
Thomas Hearn which supported Dr. Scolatti's
initial determinations, and (d) the failure of
Mr. Fowler to obtain long-term counseling.

(8) On November 24, 1993, Mr. Fowler moved to
bifurcate the property settlement issues from
the custody issues in the divorce proceedings.
On February 24, 1994, this Court assumed
jurisdiction over both divorce proceedings and
the motion to bifurcate was found to be moot.

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1 As stated *supra*, the present motions pending before this Court
2 are Mr. Fowler's motions: (1) to dismiss the youths in need of
3 care proceedings or, in the alternative, to set an adjudicatory
4 hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a
5 treatment plan; and (3) to prevent the State of Montana from
6 financing the divorce/custody proceedings.

7 DISMISSAL OF THE YING PROCEEDINGS

8 Under a Rule 12(c), Mont. Rules Civ. Pro. motion, in order
9 to dismiss a claim, the defendant must show beyond a doubt that
10 the plaintiff can prove no set of facts in support of his claim
11 which would entitle him to relief. Fraunhofer v. Price, 182
12 Mont. 7, 12, 594 P.2d 324, 327 (1979). Clearly, Mr. Fowler has
13 not shown beyond a doubt that there is a basis for dismissal of
14 this temporary investigative authority and protective services
15 action at this juncture.

16 HEARING PURSUANT TO §41-3-401(2), M.C.A.

17 Mr. Fowler argues that his "property" (i.e. children) have
18 been taken away from him without due process of law. He
19 contends that he has never had his "day in court" to contest the
20 merits of the initiating petition for temporary investigative
21 authority, and that the State of Montana has never addressed the
22 serious allegations that were originally made against him.

23 A review of the record in this case reveals that a portion
24 of the delay in bringing this case to a conclusion has been as
25 a result of the actions of Mr. Fowler. This Court has
26 maintained numerous show cause hearings in this matter. As
27 stated *supra*, at the most recent hearing, after listening to the

6.1065

1 evidence, this Court found that Mr. Fowler had not complied with
2 Dr. Scolatti's recommendations for long-term and intensive
3 counseling. It was not until Mr. Fowler's pending motions were
4 fully briefed and before this Court that Mr. Fowler filed the
5 "Notice of Voluntary Compliance" with Dr. Scolatti's
6 recommendations.

7 In addition, although Mr. Fowler was granted his motion to
8 seek a second opinion of Dr. Scolatti's evaluation, he has never
9 provided substantive information to either the DFS or this Court
10 that would support re-unification of his family.

11 A review of the case law interpreting Title 41, Chapter 3,
12 Part 4 reveals that a show cause hearing is the only hearing
13 required when a petition for temporary investigative authority
14 is filed. In Re J.W. & J.C., 226 Mont. 491, 736 P.2d 960
15 (1987). The legislature never intended to consolidate a
16 petition to have youths declared in need of care (§41-3-401,
17 M.C.A.) and a petition for temporary investigative authority.
18 (§41-3-402, M.C.A.) Id. at 497-498. This Court's continued
19 authority in this case has been pursuant to the temporary
20 investigative authority statutes. Under those statutes, this
21 Court has the authority to require that Mr. Fowler undergo
22 psychological evaluation (§41-3-403(2)(c), M.C.A.), and it has
23 the authority to require that Mr. Fowler receive counseling
24 services. (§41-3-403(2)(c), M.C.A.). The State has never filed
25 a petition pursuant to §41-3-401, M.C.A. which would necessitate
26 that this Court set a date for an adjudicatory hearing. There
27 has never been an attempt by DFS to permanently remove the

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1 children from the custody of Mr. Fowler. There has only been
2 a petition for temporary investigative authority and protective
3 services. The District Court has acted at all times pursuant
4 to §41-3-403, M.C.A. This statute gives the Court the authority
5 to provide immediate protective services, and it also authorizes
6 the District Court to use broad power to make continuing
7 arrangements for the children's protection. Matter of H.D., 256
8 Mont. 70, 76, 844 P.2d 114 (1992). The reason that Mr. Fowler
9 has never had his "day in court" to contest the allegations of
10 abuse or, as required in this case, his initial show cause
11 hearing, is because he reached a stipulation with DFS and the
12 initial show cause hearing was cancelled. This case has
13 proceeded thereon based upon the initial decisions of Mr. Fowler
14 to forego a show cause hearing which would have required the
15 State to present evidence establishing probable cause for the
16 issuance of the order for immediate protection. Now, three
17 years later, Mr. Fowler has decided that he wants his "show
18 cause" hearing whereby the State is required to establish
19 probable cause for the issuance of an order for immediate
20 protection.

21 This Court has the authority to continue to provide
22 temporary protective services to Mr. Fowler's children, and Mr.
23 Fowler should not be allowed to take this case back to square
24 one each time he hires a new attorney. Therefore, Mr. Fowler
25 has 10 days from the date of this order to submit: (1)
26 substantive information regarding a second psychological
27 evaluation which differs from the psychological evaluation

1 provided by Dr. Scolatti, and (2) substantive information
2 regarding his long term counseling on parenting skills and anger
3 control.

4 TREATMENT PLAN

5 Mr. Fowler contends that the State of Montana has never
6 implemented a treatment plan or attempted to reunify his family.
7 In this Court's Order which resulted from the November 15, 1993
8 hearing, explicit reasons were given why family re-unification
9 was not in the best interest of the children, and an explanation
10 was provided under what circumstances that temporary visitation
11 would be allowed in the future.

12 Although it is true that the policy of this State is to
13 preserve the unity of the family (§41-1-101(1)(c), M.C.A.), it
14 is also the policy of this State to protect children whose
15 health and welfare are being adversely affected by the conduct
16 of those responsible for their care (§41-3-101(2), M.C.A.).
17 This Court will continue to provide protective services to those
18 children until the issues addressed in this Court's Order have
19 been resolved. Family unity will not be preserved at the
20 expense of the best interest of the children. In Re. M.N., 199
21 Mont. 407, 649 P.2d 749 (1982). As it is now Mr. Fowler's
22 contention that he is complying with Dr. Scolatti's
23 recommendations, this Court orders that Mr. Fowler file a
24 written proposed treatment plan within 10 days of the date of
25 this order. The DFS has 10 days thereafter in which to file its
26 written proposed treatment plan. Thereafter, a hearing will be
27 scheduled upon request of the parties.

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Mr. Fowler has failed to explain how the State of Montana is financing this divorce custody dispute.

ORDER

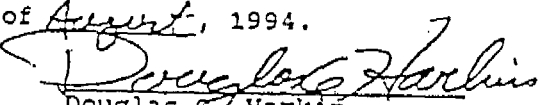
Based upon the foregoing, Mr. Fowler's motion to dismiss is DENIED.

Mr. Fowler is hereby ordered to submit (1) a second psychological evaluation, and (2) substantive information surrounding the counseling he has received on parenting skills and anger control.

Mr. Fowler is further ordered to submit a written, proposed treatment plan within 10 days of the date of this order. DFS has 10 days thereafter in which to submit its written proposed treatment plan. A hearing will then be scheduled upon the request of the parties.

Mr. Fowler's motion to prevent the State from financing the divorce custody proceedings is without merit and DENIED.

DATED this 23rd day of August, 1994.


Douglas E. Harkin
District Judge

cc: Patrick Flaherty
Attorney for William Fowler

Carol Everly
Attorney for Janet Pedersen

Kerry Newcomer
Attorney for Kelly Ball

Leslie Halligan
Deputy County Attorney

Margaret Borg
Attorney for Christopher and Jonathan Fowler

Marsha ^{mylk}
~~Marcia~~ Kirchner
 415 N. Higgins
 Missoula, MT 59801
 (406) 721-3000

AFFIDAVIT

STATE OF MONTANA)
) ss.
County of Missoula)

I, MARCIA KIRCHNER, being a person of legal age, being first duly sworn,
deposes and says:

1. I, MARCIA KIRCHNER, have resided in the Missoula area for approximately five and one half years. For the last Four years, I have worked for the Department of Family Services (DFS). My current position is that of Community Social Worker II, and I work in the Missoula Department of Family Services office. I also have a private practice as a ^{marriage} counselor/psychologist. I typically work predominantly with youths in the intake portion of the investigative processes initiated through DFS.

2. During the course of my work I regularly interact with the county attorney's office, and advocate for youths through the District Court system. Specifically, I regularly generate reports containing information that I have gathered during my investigations of cases referred to DFS. When my investigations indicate that intervention is necessary, I contact the Missoula County Attorney's office, and the County attorney then represents DFS before the court, usually petitioning the court for some necessary action, which includes but is not limited to removing a child from an environment which may pose a threat to the child's health and safety. Such actions are taken under state laws dealing with Youths in need of care, M.C.A. Title 41.

3. The usual manner in which cases proceed is for me to provide information to a deputy county attorney, and for the county attorney to generate an affidavit containing the information I provide, and to then use that affidavit to support the action requested from the court. For example, in cases where I would seek Temporary Investigative Authority (TIA) is sought under M.C.A. §41-3-102, the information I would provide would be incorporated into an affidavit of probable cause supporting the necessity for the (TIA). In my experience, the county attorney incorporates information into such affidavits, and seldom if ever does any further investigations as to the truth or falsity of the factual matters contained in such affidavits, prior to them being presented to the court. Thereafter, there is one Deputy County Attorney who sometimes does further investigation to determine the truth or falsity of the information contained in affidavits. In my

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experience, other attorneys in the County Attorney's office do no further investigations, and any factual matters presented in affidavits are allowed to stand unless a discrepancy is brought to their attention by some outside party.

4. In my experience, due to the work load and resources at the disposal of DFS workers, it is simply not possible to do a thorough investigation of cases prior to representing the county attorney with information that is later incorporated into affidavits of probable cause. In my experience, erroneous information is ~~often~~ ^{sometimes} presented to the court by the county attorney's office.

5. After intervention by DFS, and under DFS's investigatory authority, a case worker routinely seeks to have a professional psychologist or psychiatrist become involved in the case, interview any necessary parties, and present a report to the court regarding their findings. This procedure ostensibly functions as a safeguard, allowing for an outside opinion to either support or rebut a caseworker's investigations, conclusions and recommendations. In practice, however, my experience and observations lead me to conclude that some professionals tend to support the position presented to them by the case worker and/or the county attorney. As a result, erroneous information ~~often~~ ^{sometimes} gets endorsed by clinical professionals. I have personally experienced this happening in various cases.

6. In practice, the authority of the state to intervene and take action in emergency situations has been and is being abused in the Fourth Judicial District. This abuse involves DFS, Youth Court, the county attorney's office, the public defenders office, and judges. The nature of the abuse entails the state using its authority to intervene in emergency situations, then postponing any substantive hearing on the truth or falsity of the underlying allegations that led to the intervention for extended periods, often exceeding several months. Often, lawyers appointed to represent the interests of youths as their guardians ad litem do not actually represent their wards. I personally have witnessed hearings at which guardians ad litem have failed to show up to represent their wards at critical hearings, have shown up without having ever met their wards or reviewed their files, or have had others show up in their stead who were totally unprepared to act as guardian. Judges typically are aware of these abuses, and look the other way. *It should be noted that these abuses are intentional, but a deficit in an overloaded system.*

7. In my experience, individual DFS employees can potentially abuse the system by presenting unsubstantiated information to the county attorney, having the defective information ~~invalid~~ ^{which later proves to be inaccurate} endorsed by a clinical professional, and then having the court ratify the whole process. Although erroneous factual assertions are sometimes corrected in subsequent hearings, in my experience the system can be and is manipulated in such a manner as to postpone fair, on the record judicial hearings for extended periods of time. I personally can relate specific examples of such abuse.

8. The potential and actual abuses in the system, and the tacit cooperation in such abuse between DFS, the county attorney's office, and the court, are common knowledge among

all those involved. The potential and actual abuses that take place in the system are a ~~common~~ topic of conversation among DFS workers. At least one judge has specifically recognized the problem, and sought to address it, thus far ~~unsuccessfully~~. ^{with limited success.} The potential for abuse of authority by DFS and other state agency workers is present and acknowledged by the individuals involved in DFS, the county attorney's office, the public defender's office, and the court. The policies and customs of the agencies involved allow for and in some cases foster such abuses. Actual abuses are known to individuals who are engaged in the system, and are ignored, most often because the persons involved do not know what avenues exist to remedy the situation.

9. Due to issues of confidentiality, I can not disclose specific names or discuss specific cases for the public record. I am prepared to disclose information regarding specific names, places, dates, and individuals involved if ordered to do so by the court, and/or in camera with provisions that steps be taken to preserve the confidentiality of my clients.

10. The non-specific nature of the information contained in the forgoing affidavit is based partially on issues of confidentiality, but primarily on time constraints imposed by the nature of the process of which it is a part. More specific statements regarding this situation are forthcoming, and the affiant will make herself available to the court should the court desire to question her further on these matters.

11. Further the Affiant sayeth not.

By Marcia Kirchner
Marcia Kirchner

On the 15th, day of November, 1994, before me, M. L. Brown, a notary public for the State of Montana, personally appeared Marcia Kirchner, known to me, and stated under oath that the matters and things herein set forth are true to his own knowledge, and acknowledged to me that he executed the same, in witness wherefore I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

{SEAL}

M. L. Brown
Notary Public for the
State of MONTANA
My Commission expires
on March 19, 1996

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February 2, 1995

State Capital
Capital Station - Box 14
Attn: Senator Jim Burnett
Helena, MT 59620

Dear Senator Burnett:

Pursuant to our telephone call of February 1, 1995, enclosed are articles my fiance' and I wrote to the Roundup Record Tribune as well as other articles which have appeared regarding the Department of Family Services. Following is the scenario which happened to me, my daughter and my fiance'. We believe it is about time DFS was made to stand accountable for their actions and support your Senate Bill 206. If we can be of any further help please feel free to call us at (406) 323-1451.

A verbal exchange occurred on May 8th between Kara, my daughter, and myself. My fiance', Karen Kowalczyk, was also present. We had gone out for "Mother's Day Dinner" around 3:00 p.m. After dinner and returning home, I told Kara we were going to finish fencing the dog kennel. Karen and I had already started the kennel, setting the posts in concrete and stringing part of the cyclone fence for the dogs. I told Kara that belongs it was for her dog, as well as Karen's, that she could help and with three of us working on it, it wouldn't take very long to complete it. Kara then proceeded to pout all the way home making for a very tense and uncomfortable atmosphere. Upon arriving at home, Kara and I exchanged words because she didn't want to help with the fence. Kara went to her room, slamming the door. We went in to change clothes. Before we got changed, Kara tore out of the house, got in my pickup and was gone. We had no idea where she was headed, but figured she was headed out to Curtis Goffena's, her boyfriend, because that is where she wanted to go. Karen and I went out to work on the dog kennel. Later that day, around 5:30, we got a telephone call from Vicki Fawcett, of Department of Family Services, saying Kara was up at the Sheriff's Office and had filed a complaint against me alleging child abuse. We have yet to see a copy of the complaint. There was absolutely no abuse involved in this whole exchange. I also asked that Kara be returned home so we could sit down and discuss the whole situation and that was denied by Vicki Fawcett.

Because Kara is a minor (16), Department of Family Services was called. DFS called me and indicated that Kara could come back home after a 48 hour "cooling off" period. However, after 48 hours I was told to come up and sign papers to place Kara in foster care. I questioned why she was not being returned home after the 48 hours and was told "because we feel it is a threatening situation." No investigation was ever done. To our knowledge, the Department of Family Services did not appear in District Court within 48 hours to show cause why the child had to be removed from the family home. No investigation was ever done in our home to find out if the child was telling the truth. I went up to DFS and talked to Michelle Sobonya and she explained to me that it was in Kara's best interest to be placed in a foster home.

When I questioned the choice of foster home, I was told Kara had requested she be placed with Betty Goffena and that is where DFS was placing her. I questioned the placement of Kara at Betty Goffena's because Betty Goffena was not a licensed foster care home and that Curtis Goffena, Kara's boyfriend, has a mobile home and lives on the same property approximately 50 yards from Betty's back door. I felt this was not a safe or healthy situation that Kara had expressed wanting to live with Curtis, however DFS did not see anything wrong with this as this is where Kara wanted to be. I then told DFS I was holding them totally responsible for my daughter.

I did not admit to any of Kara's allegations of abuse. I admitted to having an argument with Kara regarding the building of the dog kennel and that we had exchanged words in this regard. But not once was there any abuse - just an exchange between myself and my daughter.

I am self employed and have my own construction building business. I was scheduled to be out of town most of the summer. I did come home, however, on weekends to see my family and take care of business. I had told DFS what my situation was and asked that they keep Karen apprised of the situation as I would be talking to her in the evening. DFS

agreed at that time to this arrangement. Karen contacted DFS on several occasions to find out if an appointment could be made so I could call in or if I could reach a counselor after hours as I was up in the mountains, away from a telephone from 7:00 a.m. until 6:00 - 6:30 p.m. every day. I was informed of the office hours and that I would have to call in at that time. Karen explained to DFS that this was impossible, that I was concerned about Kara and wanted to find out how she was doing, but again was INFORMED that these were the hours and I could call collect during that time. Karen told them the collect call part wasn't the problem - the hours were because I was at least a 1/2 hours drive away from a telephone and could not leave my partner on the job by himself because of the risk factor of an accident. DFS was not willing to make any concessions so I could talk to them.

Within 20 days after Kara was removed from home, I have no knowledge of DFS returning to District Court to show cause why the separation must continue.

Only one mediation meeting was ever set up for me and my daughter. Present at that meeting were Michelle Sobonya, social worker for DFS, Curtis, Kara's boyfriend, Kara and myself. This meeting was supposed to be between only myself, Kara and Michelle so we could work on getting Kara back in the family home. Having Kurt there made the meeting very uncomfortable. Some 10 to 15 minutes into the meeting Michelle Sobonya was called away on an "emergency". Kara, Curtis and I were left to finish the meeting on our own. If I was such a threat to my daughter, why was it okay to leave us alone in an unsupervised situation? No attempt was made to set up further meetings between my daughter and I.

Michelle signed an agreement, on behalf of DFS saying that we would be informed of any medical or dental attention Kara needed and it was "by chance" that we found out she had her wisdom teeth out. We were never even informed of that fact that she needed this work done. Kara was at her Grandfather's house and Karen happened to stop in to talk to my sister who was visiting from Minneapolis. Kara had gone to change some gauze in her mouth. Karen asked Kara what was wrong and Kara told her about her oral surgery. We were never contacted by DFS about the dental work Kara had done. She also later found out that Kara had a mole removed and there were some telltale signs of possible cancer so she had to go back for more tests. We were never told about this either. We found out about it through one of Kara's teachers in whom she had confided.

In July, Kara was allowed to take a trip out of state with the approval of DFS. We were never told about the trip and found out about it only after someone asked if Kara had gotten back from Idaho. Again DFS had signed an agreement stating we would be kept informed of what was going on and yet she went to Idaho without our knowledge.

I had also asked for periodic progress reports on meetings Kara was having with Donna Johnson, a counselor, over in Billings. This was never done. I were told she was going, but was never told of the outcome or when we might be able to meet as a family unit so as to resolve any issues that may be present.

In August I was served with a "Petition for Temporary Investigative Authority and Protective Services". This is the first document through this whole ordeal I had ever seen regarding the charges which were being held against me. Due to the lack of communication on behalf of DFS, I refused to sign the documents and hired an attorney, Randy Spaulding. I decided to try and settle this without the help of DFS. Vicki Knudsen, Musselshell/Golden Valley County Attorney, Floyd Brower, Guardian ad Litem for Kara, our attorney Randy Spaulding, myself and my fiancée Karen Kowalczyk, met and reviewed a document drafted by Floyd Brower to keep Kara at the Goffena Ranch. I again questioned the fact of Kara living with her boyfriend with Floyd Brower admitting that Kara and Curtis were in fact sleeping together. Kara being 16 years old and her boyfriend being 21. Floyd Brower and Vicki Knudsen didn't seem concerned even though I was objecting to my daughter being out there. I signed the document as I was threatened to be taken to court and it was in Kara's best interest that I signed it.

Things seemed to go along fine until Kara and her boyfriend Curtis Goffena split up. On October 28th, Kara asked Bette Goffena if she could spend that Friday night in town with one of her friends. To this Bette agreed. Evidentially, Bette didn't give Kara a specific time to return home and began to worry about her. On Saturday, October 29th, Bette sent Kurt, now the ex-boyfriend, in to town to find Kara. Evidentially Kurt said some nasty things to Kara and an argument ensued. The local police were called and this was the last time I saw Kara until November 1st, 1992.

and because she had to take Kara to Billings, she would miss her daughter's ball game and took Kara to the jail where

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she sat for approximately four hours. Kara was taken to Billings and placed in a Youth Detention Center. I was never informed about her being sent to the facility, or being held in jail, and it was not until my sister-in-law called the following day, October 30th, did we find out that she was over there. I still, to this date, do not know what charges were placed against her to warrant her time at the detention center. I was never told when she would be allowed to leave. I told my attorney, who contacted Vicki, Donna and Floyd that I wanted Kara to come back home rather than being locked up in the center. I was never told what the rules as far as telephoning and visiting with Kara while at the facility. Kara finally found out the only people who could call her were myself, my father and his new wife, and her mother. Kara indicated she needed some clothes, shoes and miscellaneous personal items. We asked her if she was permitted to leave the facility and she said yes but it had to be arranged 24 hours in advance.

On November 2nd I contacted Donna Marmon, County Probation Officer, requesting to take Kara out of the facility to get her the clothing items she needed. Donna indicated she would have to talk with Floyd Brower, Guardian at Litem for his approval. I had not heard from her by Friday, November 4, and our 24 hours was drawing to a close. I tried to reach Donna at home but only got her answering machine so left a message seeking permission. Because of the 24 hour window, I called Floyd Brower myself. Floyd said Donna Marmon had not contacted him but as far as he was concerned he didn't have a problem with my taking Kara shopping. Donna Marmon then called back and said she would not give me permission to take her out of the facility, but would not offer an explanation as to why.

On November 12th, Kara called home and talked to Karen as I was helping at a Rotary Auction. Kara indicated that "a friend of my mom's" was taking her on Sunday and she needed some money. She said Donna Marmon was coming to Billings to take Kara to the Girls Basketball Tournament and would she get hold of her and send some money over with her. Karen called Donna Marmon at home and tried to explain the situation, however was met with a very rude and belligerent "You don't have telephone privileges and I won't talk to you" from Donna Marmon. Donna then slammed the receiver down. Karen tried to call her back within a few minutes to see what the problem was and only got her answering machine.

Kara was finally released on Tuesday, November 15th. Even though I had told my attorney, Vicki Knudsen and Donna Marmon, I wanted Kara to come back to the family home, Kara was told that was not an option for her. Her options were to either go live with the mother who abandoned her at age 11 or go to another youth detention facility. Not wanting to go to another facility, Kara agreed to go live with her mother in Boise, Idaho. Brenda Lekse, had to pick Kara up at the Youth Facility and bring her to Roundup. Donna and Vicki would not let Kara even stay in town overnight. She had to be driven back to Billings and then come back on Wednesday for a meeting with Donna. Brenda was included in the meeting with Donna Marmon, however, I was not. Kara claims that Donna wrote some additional stipulations into the Petition after everyone else had signed, however, we have been unable to get a copy of this document to find out if in fact Donna did write things in there. Kara claims Donna and Vicki told her she could not come back to Roundup to even visit with her family until Spring break and she could not come back to live in Roundup until after she reached 18. She cannot graduate with her class in the spring of 95, nor can she even attend the graduation exercises of her classmates because of this stipulation.

On October 31st, Karen called the Department of Family Services and spoke with the secretary. She requested names and telephone numbers of supervisors over DFS in Roundup and was given these. She then called Hank Hudson, the State Director at Helena and explained what I had been through. Mr. Hudson said he wouldn't get involved until "all other people had been contacted" and I should follow the chain of command. Mr. Hudson informed Karen that she should contact Jim Moe in the Lewistown office and have him investigate the matter and if all else failed to call him back.

November 1, 1994 - Karen spoke with Jim Moe's receptionist. Jim was in Harlowton but she would give him the message. She also indicated he was scheduled to come to Roundup the following week.

... He indicated he would like to meet with us with November 10th or 15th. He said
would investigate the matter and get back to us to set up the meeting.

November 7th - Talked to Jim Moe. He will meet with us at 3:00 on Thursday November 10th at our home. I
ed Randy Spaulding, my attorney to ask him to attend the meeting also. Jim took down all the information and said
would investigate the matter and get back to us.

EXHIBIT 1

DATE 2-6-95

1 SB 206

December 5th - Called Jim Moe regarding status of case. He was on another call but would be given the message.

December 6th - Talked with Jim Moe. He indicated no major thing was done wrong. He felt the case had been handled properly, however it should have been handled as a "Child in Need of Supervision" vs. "Child in Need of Care".

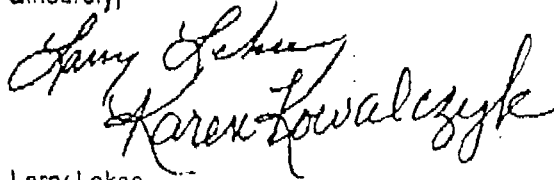
Jan. 10, 1995 - Wrote a lengthy letter to the editor. It was published on January 11th. Consensus of people in town was case was handled very improperly and have heard numerous other horror stories along the same lines. (See attached copy of article).

Senator, hope this helps support your bill. Wish we could be there in person to testify on your behalf. Even though this bill will not help us a whole lot, if we can prevent other families from living through the nightmare we have this last year, we will have accomplished something.

We also heard that DFS is asking for an additional \$8 million to finance their department. Until they are held accountable and can justify the \$8 million right up front, we vote that their request be denied.

Thank you very much for keeping us informed. Please put us on your mailing list so we can keep abreast of what is going on with DFS. We are on your side.

Sincerely,



Larry Lekse
Karen Kowalczyk
P. O. Box 373
Roundup, MT 59072
1-406-323-1451

OPINION & LETTERS PAGE

to the family home and were told it was a "threatening" environment. The home environment was NEVER investigated, therefore, how could it be determined it was a "threatening" environment?

FACT: A child can request what home they wish to be placed in.

Kara had talked about moving in with her boyfriend, Curtis Goffena, a couple of weeks before this incident took place. Being only 16, we told her we were very much against it. However, she requested to be placed in Betty Goffena's home and was granted her request by DFS. DFS was not at all concerned about the fact Curtis lived in a mobile home on the same property as Betty. Even after we expressed our concerns about the situation and told them of the conversation we had relative to her moving in with Curtis, they still let her remain there. We were assured, that as long as the two of them were at Betty's house, nothing was going on. However, we were also told that she spent "many late nights" with her boyfriend. We were recently told that if DFS had checked the situation out, 30% of Kara's stuff was at Curtis' not Betty's.

FACT: Even though DFS claims to be a mediator between family members, nothing will be done to reunite the family.

We were told that DFS would set up meetings between us and Kara so we could once again be a family. In the three months DFS was involved, there was only one meeting set up.

Between immediate family members, as well as Michelle Sobonya from DFS, also included Curtis. About 10-15 minutes into the meeting, Michelle Sobonya was called away on "an emergency" and my daughter and I were left there to mediate on our own. Even though I requested additional meetings they were not set up.

FACT: If you are working in an out of the way place and are unable to easily get to a telephone, DFS will not make concessions as to office hours.

I was building a cabin in the mountains and was approximately 30-45 minutes one way from a telephone. We tried to get DFS to set up an evening and time I could call in and get periodic updates on the status of being reunited with my daughter, only to be told that the office hours were 8:00 a.m. to 5:00 p.m. and I would have to get to a telephone at that time.

FACT: Even though you request a specific person as a contact person, DFS WILL NOT honor your request.

Because I was working in the mountains and away from a telephone, I asked DFS to keep my fiancée, Karen Kowalczyk, informed of Kara's progress and any needs she may have. DFS was always requesting things of Karen, i.e. letting Kara come get her personal belongings, stereo, etc. but would not tell her what was going on with the case. It was not until we refused to sign further papers to continue the foster care and started asking questions as the lack of communication on their part, were we told there was a "special form" which needed to be signed in order for DFS to give her this information because she was not a "legal family member."

FACT: Once your child(ren) are placed in foster care, DFS can

DFS called and asked if we would bring all of Kara's personal items up to the office. To this we agreed. After transporting all her clothing, make-up, etc. we were then asked for such items as a daybed, telephone, television, horse, plane, etc. Had I not put my foot down and started saying "NO" I feel they would have almost emptied my entire home.

FACT: If your child(ren) need medical attention while in the care of DFS, you will not be told about it.

Kara had doctors appointments and her wisdom teeth pulled while she was in the care of DFS and even though they had signed an agreement stating I would be informed of any and all medical attention she was to receive I found out about everything "through the grapevine."

FACT: DFS can give your child permission to go out of state without your knowledge or approval.

Kara, with the permission of DFS, was allowed to take a trip to Boise, Idaho. I was not aware of this until a family member mentioned she had gone. I would have approved it anyway as she went to visit her mother, but shouldn't I have been consulted first or at least been told she was going, after all that was the agreement with DFS?

FACT: The County Attorney, Vicki Knudson and Youth Probation Officer, Donna Marmon, can send your child to a Youth Detention Facility and they do not have to tell you about it.

Kara was sent to the Billings Youth

Service Facility on Saturday, October 29, after an altercation with Curtis. We were NEVER called and told about this decision and found out about it after a telephone call from a family member. When we asked Kara why she didn't call us, she indicated they told her she couldn't call. However, she could call her Grandfather or another family member and tell them. Normally a child being sent to a Youth Services Facility has to be charged with some sort of violation. However, to date, we have never been told exactly what that violation was. Curtis Goffena was never reprimanded even though, according to witnesses, he started the whole altercation. Upon the County Attorney, Vicki Knudson, being called, Kara, in front of witnesses, was sworn at and told how inconvenient it was for Mrs. Knudson to come down because her daughter had a hole in her waterbed which needed fixing and she was also going to miss her daughter's ball game. When a person files for a county job and the county is paying their wages, since when did a person have to consider what family problems were going on and whether or not is convenient for them to do their job? Besides, it was not Kara's choice to have Vicki Knudson called, someone else made that decision for her, so why was Vicki taking this out on her? Is there a personality conflict here, or should this person even have been representing the county?

FACT: The County Attorney and Youth Probation Officer can "dictate" who your child can see and talk to once they are placed at a Youth Correction Facility.

I was told the only people who could call Kara were her Grandfather and his wife, myself, and her Mother, even though Kara and Karen got along really well. Kara was treated

otherwise. I requested a four hour outing with Kara to go shopping and out for dinner as it was Karen's birthday and Kara needed some clothes and personal items. I was told I needed to make arrangements 24 hours in advance, so on Wednesday, November 2, I called Donna Marmon to see if she would make the arrangements. I was told she would consult with Floyd Brower, the guardian ad litem for Kara, and get back to me. I had not heard back from Donna Marmon on Friday and was unable to reach her by phone so a message was left on her answering machine. I then called Floyd Brower. He indicated that Donna Marmon had not contacted him but as far as he was concerned, we COULD go shopping with Kara on Sunday. When Donna finally returned my telephone call, she told me I COULD NOT take my daughter out of the facility. I was not given a reason as to this decision. However, the following Sunday, a "friend" of Kara's mother (not a family member) was allowed to take her out shopping for four hours.

FACT: Even though your child(ren) is placed in a Youth Facility and you tell the County Attorney, Probation Officer and Guardian Ad Litem that you would like them back home, your child will not be given that option.

Kara was in the Youth Facility for several days without being told when she would be able to leave. In the meantime, her homework was being brought over to her so she would not get behind on her assignments. When the County Attorney and Probation Officer talked to her, the only options she was given in order to leave was to go live with her mother in Boise, Idaho, or go approved to another correction facility. The option of coming back to the family home, even though there would be 24 hour supervision, was not an option.

Probation Officer Donna Marmon, County Attorney Vicki Knudson and Floyd Brower decided Kara was "A child in need of Supervision." After all this time, six months to be exact, these three "wise" people have come to a conclusion. Isn't it amazing!!! This is exactly what Kara rebelled against from the beginning. Kara had supervision at home and she didn't like it. She wanted more freedom and less supervision. The circle is now complete. Kara has been sent to live out of state with rules and guidelines set by the court. The three "wise" people have reached a conclusion and we, the family, have been put through undue hardship and pain.

Questions remaining unanswered by the "three wise people" are:

—Were these three "wise" people working together? If so, why weren't we able to get the same answers from all three instead of being handed the run around?

—Did telephone calls actually

ing in Roundup?

—Did the probation officer or county attorney have a personal conflict with Kara?

—Why weren't the parents allowed to help decide what was best for the child?

—Why didn't the county investigate the living arrangements and work schedules of both parents and make a decision based on facts, not hearsay.

—Did the county actually consider what was best for the minor child or did someone who is in a position with a little authority, let that authority go to their head and appoint themselves as the decision maker?

—Was it in the child's best interest to uproot her from a community she lived in and loved, take her away from friends and a school she looked forward to graduating from in the spring, as well as the security of a supervised home, immediate family and close friends and place her in the home of the mother who had abandoned her only 7 years earlier?

M. Gance', Karen, and I would like to thank everyone for their words of concern while we have been dealing with this. We have nothing to gain from writing this letter other than to make people aware of what is going on in our community and with our children and possibly preventing others from having to go through the same. We have lived through a lot of heartache and tears since due to the Department of Family Service, the County Probation Officer, Donna Marmon, the County Attorney, Vicki Knudson, and Attorney, Floyd Brower. We hope that someday they will have to endure the same sort of heartache, stress and humiliation they have put us through. Maybe then they can be a little more compassionate and understanding towards their fellow citizens.

Larry Lekso

Letter to the Editor

After attending a meeting last month with the topic of what we, the community, can do for our children, we felt it was our duty to write this letter and let people know what is going on in our community in reference to our children and the way families are being treated. These are the facts, along with an explanation, as to the situation which happened in our family starting last May.

FACT: Teenagers in this community have more rights than the parents.

An exchange in May occurred between my daughter and I over responsibilities she had agreed to relating to her dog and helping with building a dog kennel. After an exchange of words, my daughter went up to the police station and filed a complaint alleging verbal abuse. Kara is a minor, therefore, the Department of Family Services (DFS) was called. DFS called my fiancée and me and informed us of the charges. We asked Kara to be returned to the family home. That the discussion was just that and nothing more—no threats, verbal or physical abuse or anything—just an argument. However, the department felt a 48 hour "cooling off" period was in order—to this we agreed.

FACT: After 48 hours and NO investigation, your child(ren) can be placed in a non-foster care home. After the "cooling off" period, we were told we had to come up and sign

SPONSOR'S FISCAL NOTE

Form BD-15S

There is hereby submitted a Sponsor's Fiscal Note for: _____, Version: _____

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 2-6-95

FILE NO. SB 206

FISCAL NOTE FOR SB 206

Description of proposed legislation:

A BILL CHANGING THE CODE RELATING TO CHILD REMOVAL BY THE DEPARTMENT OF FAMILY SERVICES.

ASSUMPTIONS:

- (1) This legislation will reduce the number of refferals that have resulted in removing children from the family and placing them in foster care by probably 25% (Page 1, Line 24)
- (2) SECTION 5 (41-3-202) ACTION ON REPORTING: Page 9, Line 28 AND 29
A video tape is not necessary unless the social worker makes the initial interview without someone representing the family. Sheriff and police department could take and maintain the video tape of the department negotiated with them to do so.

FISCAL IMPACT: NONE

Jim Burnett
PRIMARY SPONSOR

3 February 1995
DATE

Fiscal Note for: SB 206 Version: _____

SB 206

SENATE JUDICIARY COMMITTEE 206
EXHIBIT NO. 3
DATE 2-6-95
CASE NO. SB206
Filed Jan. 3, 19
(PB)

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

WILLIAM V. FOWLER,

Plaintiff,

v.

THE STATE OF MONTANA,

JOSEPH MAZURIK, Attorney

General for the State of Montana,

DEPARTMENT OF FAMILY

SERVICES, MISSOULA COUNTY,

Defendants.

Civil Action No. CV 95-1-M-CCL

COMPLAINT

42 U.S.C. 1983 VIOLATION OF CIVIL RIGHTS
UNDER COLOR OF STATE LAW (M.C.A. §§41-3-402, 41-3-403)

Comes now the Plaintiff, and in his complaint against the defendants states as follows:

JURISDICTION

I.

This the action arises under the civil rights statutes, Title 42, United States Code, Section 1983;

II.

Jurisdiction is conferred on this Court by Title 28, United States Code, Section 1331;

III.

The plaintiff is a resident of Missoula, Montana which is included in the judicial district of Missoula, Montana in which this action is brought;

IV.

The plaintiff is an injured party in this matter;

V.

Defendant State of Montana is a member state of the United States of America. Defendant Joseph Mazurek is the chief law enforcement official of the State of Montana, who, in enforcing the statute challenged herein, acted in his individual capacity. Defendant Department of Family Services is an agency of the state of Montana; Missoula County is a county in the state of Montana.

BACKGROUND FACTS

VI.

On June 14, 1991, the state of Montana petitioned the Montana Fourth Judicial District Court for temporary investigative authority and protective services over the Plaintiff's children,

Christopher Fowler and Johnathan Fowler, alleging child abuse. Temporary investigative authority was granted to the Montana Department of Family Services (hereinafter DFS), and a hearing to show cause why said authority should not continue was scheduled.

VII.

In the more than 42 months since the state court assumed "temporary" investigative authority the Plaintiff has never been afforded a hearing in which to challenge the allegations in the affidavit of probable cause that began the proceeding in state district court. All parties in the Plaintiff's case reached an oral agreement to postpone the show cause hearing until a psychological evaluation of Mr. Fowler could be made. It was agreed by the parties that the evaluation could be completed within approximately 30 days. At a hearing on June 24, 1991, Leslie Halligan, representing DFS, described the agreement as "somewhat of a stipulation."

(6/24/91 Tr. at 3, transcript excerpts attached, EXHIBIT 'A')) The court ordered any agreement to be reduced to writing and entered in the record. No such stipulation to waive or postpone a probable cause hearing was ever entered in the record. Nevertheless, no probable cause hearing has yet been held.

VIII.

The Plaintiff has never been afforded any type of adjudicatory hearing in which to challenge the mass of hearsay allegations on which the state has relied in continuing its 'temporary' authority. The court has never made any findings of fact or conclusions of law relative to the underlying accusations levelled against the Plaintiff. Most importantly, the state has restrained the Plaintiff from having any contact with his sons in the years since it assumed its "temporary" authority.

IX.

DFS, the state court, and the Missoula County attorney have asserted that under state law, specifically under §§41-3-402 and 41-3-203 M.C.A., they can remove children from their parents until they reach the age of majority. The full text of M.C.A. §§ 41-3-401 through 41-3-404 are attached as EXHIBIT 'B'. The state further asserts that the only due process to which a parent is entitled after a child is removed from their custody is a show cause hearing at which the state has the *de minimus* burden of establishing probable cause to do an investigation. In the Plaintiff's case, the court contends that the Plaintiff inadvertently waived even this degree of due process.

X.

According to the state, depriving the Plaintiff of all contact with his sons has been continued under "temporary investigative authority and protective services." Judge Douglas G. Harkin's Memorandum and Order,¹ Cause No. J-2689, In the Matter of Declaring Christopher Fowler and Jonathan Fowler Youths in Need of Care, at 4 (attached, EXHIBIT 'C' , hereinafter referred to as Harkin Order). Apparently, a forty-two month period of deprivation of citizens' children qualifies as being a "temporary" measure under the youth in need of care statutes according to the defendants.

XI.

¹ It should be pointed out that Judge Harkins order is not supported by any findings of fact, since no fact finding process has ever occurred in the Plaintiff's state court case.

The state contends that a showing of probable cause is all that is necessary while they are acting under their "temporary" (i.e., indefinite) authority: "A review of the case law interpreting Title 41, Chapter 3, Part 4 reveals that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed." [citations omitted] (Harkin Order at 5).

XII.

The state contends that "the legislature never intended to consolidate a petition to have youths declared in need of care (41-3-401, M.C.A.) and a petition for temporary investigative authority (41-3-402, M.C.A.)," (Harkin Order at 5), despite that fact that all of the sections in Part Four of Chapter Three, Title 41 M.C.A. are interrelated, and cover abuse, neglect, and dependency proceedings.

XIII.

Although cases initiated under the temporary investigative authority Statute (§41-3-402) are characterized as "Youth in Need Of Care" proceedings the state denies that it is constrained by Youth in Need of Care Statutes. Reasoning that it acted under § 41-3-402 rather than §41-3-401, the ~~court~~ ^{state denies} denied the requirements of a statutory adjudicatory hearing mandated by §41-3-401:

§41-3-401. Abuse, neglect, and dependency petitions. . . . (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.

XVI.

The state's purpose in asserting authority under the section of the code that makes no reference to procedure (§41-3-402) is to absolve it of the need to afford parents any degree of due process: "The State has never filed a petition pursuant to §41-3-401, M.C.A. which would necessitate that this court set a date for an adjudicatory hearing. There has never been an attempt by DFS to permanently remove the children from the custody of Mr. Fowler. There has only been a petition for temporary investigative authority" (Harkin Order at 5,6). The state's strategy in circumventing due process requirements is to define any length of time (for example, over 42 months in the Plaintiff's case) as "temporary" rather than "permanent."

XV.

The state contends that its authorization to provide immediate protective services gives it the authority to effect a *de facto* termination of parental rights without the need of any adjudication: "The District Court has acted at all times pursuant to §41-3-403, M.C.A. This statute gives the Court the authority to provide immediate protective services; and it also authorizes the District Court to use broad power to make continuing arrangements for the children's protection." (Harkin Order at 6).

XVI.

The state asserts that it may act indefinitely under "temporary" authority granted to it by statute: "This Court's continued authority in this case has been pursuant to the temporary investigative authority statutes. . . . The state has never filed a petition pursuant to §41-3-401,

M.C.A. which would necessitate that this Court set a date for an adjudicatory hearing." (Harkin Order at 5). The state's strategy is clear: first, allege abuse and neglect; second, file for "temporary" investigative authority under §41-3-402, M.C.A. rather than file an abuse, neglect and dependency petition under §41-3-401, M.C.A., which mandates an adjudicatory hearing; third, extend the "temporary" authority for months and even years, while denying the necessity of an adjudicatory hearing mandated by §41-3-401, M.C.A.

XVII.

In a ruling on a Petition for Writ of Supervisory Control filed by the Plaintiff (Montana S.Ct. Order in Cause No. 94-459, attached, EXHIBIT 'D') the Montana Supreme Court endorsed all of the conclusions regarding the implementation of the child abuse, neglect, and dependency statutes that were reached by the state district court. In that ruling, the Montana Supreme Court stated that "While this case has been pending for some time, it must also be noted that the allegations in the underlying proceedings involve child sexual abuse . . . It also appears that the District Court is acting within its jurisdiction and is attempting to protect the best interest of the children involved." S.Ct. Order in Cause No. 94-459 at 2.

XVIII.

Montana justifies its implementation of the law in the Plaintiff's case based upon the fact that the initial "allegations . . . involve child sexual abuse," *Id.* The State makes no attempt to justify its circumvention of §41-3-401 (the abuse, neglect and dependency statute). Further, the state acknowledges that by circumventing §41-3-401, it need not provide parents with an adjudicatory hearing before removing their children for periods of up to eighteen years. According to the Montana Supreme Court, decisions to remove children from their

parents for the remainder of the childrens' minority are based solely on the fact that child sexual abuse is *alleged*, rather than on findings of fact indicating that abuse has actually occurred.

COUNT I.

CIVIL RIGHTS VIOLATION UNDER COLOR OF STATE LAW.

XIX.

Under the guidance of the courts, the Montana attorney general, the DFS, and other officials charged with enforcement of laws governing child abuse, neglect and dependency, routinely and as a matter of policy, violate parents rights to due process of law. Specifically, under the authority of M.C.A. §§41-3-402 and 403 the defendants remove children from their natural parents for indefinite and prolonged periods of time, often until the child has reached the age of majority, without affording parents the opportunity of a hearing at which the allegations against them can be fairly challenged and adjudicated.

XX.

Under the authority of M.C.A. §§41-3-402 and 403, the defendants boldly assert the authority to remove a child from its home and refuse visitation to a custodial parent (in the instant case for a period approaching four years) and to afford the parents nothing more than a hearing at which the state must establish probable cause to conduct an investigation. In the Plaintiff's case, even this probable cause hearing was denied. The defendants' use of this authority is part of their policy of law enforcement, as well as part of the customary practice of Missoula County, the county attorney's office, DFS, and the state courts, acting in concert

with each other. It is further the custom and policy of Missoula County, the Missoula county attorney's office, DFS, and the public defender's office, to file false and unsubstantiated affidavits, or to knowingly allow false and unsubstantiated affidavits to be filed, as part of the scheme to remove children from their parents without due process of law. The result is a continuing violation of fundamental Constitutional rights which will persist until this court takes declaratory and injunctive action.

XXI.

The acts complained of by the Plaintiff violate citizens' Fifth and Fourteenth Amendment rights to due process of law guaranteed by the U.S. Constitution generally, and violated the Plaintiff's Fifth and Fourteenth Amendment right to due process of law in particular. Specifically, the defendants have deprived the Plaintiff of a most fundamental, natural right: that of parenting and consorting with his children. Said deprivation was accomplished without even the most basic component of due process of law: that of notice and hearing at which the allegations underlying the state's claim can be adjudicated.

XXII.

The acts complained of were performed under color of state law, specifically §§41-3-402 and 403 of Title 41, Chapter 3, part 4 of the Montana Code Annotated.

XXIII.

The Plaintiff has exhausted all remedies available to him under State law to obtain relief from the unconstitutional implementation of state law complained of.

DAMAGES

XXIV.

The acts described in paragraphs one through twenty-one have resulted in the Plaintiff being deprived of his children for over three and one half years. There is no adequate remedy at law for such a loss.

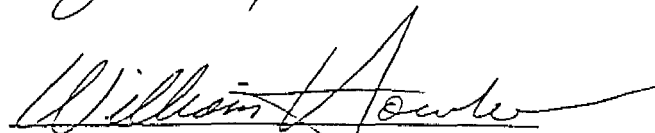
RELIEF REQUESTED

WHEREFORE, Plaintiff requests on the first six claims for relief:

1. That the Defendants be ordered to immediately desist in their application of the statutory scheme governing youths in need of care so as to deprive citizens of their right to a hearing prior to having their parental rights terminated or diminished;
2. To declare §41-3-402 and §41-3-403 as interpreted by the Montana Supreme Court and as applied by the State of Montana through the Attorney General and the DFS to be unconstitutional due to said statutes, as applied, depriving parents of fundamental, constitutional rights without due process of law.

Respectfully submitted this 3 day of January, 1995.

By:


William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801

1 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

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IN THE MATTER OF:

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DECLARING CHRISTOPHER,

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FOWLER and JONATHAN FOWLER,

CAUSE NO. J-2689

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Youths in Need of Care.

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Taken at the Missoula County Courthouse

Missoula, Montana

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Monday, June 24, 1991

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TRANSCRIPT OF PROCEEDINGS

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Before the Honorable Douglas G. Harkin, District Judge

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Reported by Sharon L. Gaughan, RPR, CM, Official
Court Reporter for the Fourth Judicial District and
Notary Public for the State of Montana, residing in
Missoula, Montana.

25

A P P E A R A N C E S

LESLIE HALLIGAN, Deputy County Attorney,
Missoula County, Missoula County Courthouse,
Missoula, Montana, 59802,
appearing on behalf of the Department of
Family Services.

MARGARET BORG, Chief Public Defender,
Missoula County, 317 Woody Street, Missoula,
Montana 59802,
appearing as guardian ad litem.

ARTHUR AGNELLINO, Esq., 138 West Broadway,
Missoula, Montana 59802,
appearing on behalf of William Fowler.

MONDAY, JUNE 24, 1991

(WHEREUPON, the following proceedings were had and entered of record.)

THE COURT: J-2689, Fowler.

MR. AGNELINO: Your Honor, we've entered into a stipulation.

MS. HALLIGAN: Somewhat of a stipulation; there's a few little bones, and Art's client has agreed to continue the temporary investigative authority and to undergo evaluations. We have asked Phil Bornstein to do those evaluations of the father and of Christopher, and he has agreed to do those.

Jonathan's mother is Kelly Ball (phon.) and she's trying to arrange for Lindsay Clodfelter to do the evaluation of Jonathan. If that doesn't work out because Lindsay's been unable to return a phone call, apparently, we would ask that Sarah Baxter be asked to do the evaluation, and if Art has a different suggestion --

THE COURT: Why are we splitting up these evaluations?

MS. HALLIGAN: Well, at this point, it was just because we couldn't agree on Chris.

THE COURT: I can help you agree. I'm going to get two different evaluators giving me conflicting

EXHIBIT 'B'

M.C.A. §§ 41-3-401 through 41-3-404:

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal proceedings.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

41-3-402. Petition for temporary investigative authority and protective services.

(1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

41-3-404. Adjudicatory hearing -- temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

EXHIBIT 3
DATE 2-6-95
1 SB 206

Douglas G. Harkin, District Judge
Department 4
Fourth Judicial District
Missoula County Courthouse
200 West Broadway Street
Missoula, MT 59802-4292
(406) 523-4774

FILED AUG 23 1994

KATHLEEN D. BREUER, Clerk
[Signature]
Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN THE MATTER OF DECLARING) Cause No. J-2689 / 83
CHRISTOPHER FOWLER and)
JONATHAN FOWLER,) MEMORANDUM AND ORDER
YOUTHS IN NEED OF CARE.)

This matter comes before the Court upon William Fowler's motions: (1) to dismiss the youths in need of care proceedings or, in the alternative, to set an adjudicatory hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a treatment plan; and (3) to prevent the State of Montana from financing the divorce/custody proceedings. All parties have briefed the motions and the matter is deemed submitted and ready for ruling.

BACKGROUND

This action was initiated on June 14, 1991 when the State of Montana petitioned the Court for temporary investigative authority and protective service. The petition and the affidavit provided by a social worker for Department of Family Services [hereinafter, DFS] alleged abuse within the meaning of §41-3-102, M.C.A. Judge Jack Green found probable cause to believe that the children were youths in need of care and in

1 need of temporary investigative services, and he granted
2 temporary investigative authority to DFS. An order to show
3 cause hearing was scheduled for June 24, 1991. Both counsel for
4 DFS and Mr. Fowler appeared and advised this Court that a
5 stipulation had been reached. Thereafter, this Court issued a
6 restraining order granting DFS temporary investigative authority
7 on July 17, 1991. Mr. Fowler was restrained and enjoined from
8 any personal or telephone contact with the two minor children
9 or their mothers.

10 Thereafter, numerous motions were filed by the State of
11 Montana and Mr. Fowler. There have been numerous show cause
12 hearings upon the motions. A brief chronological review of the
13 course of this case reveals the following:

- 14 (1) On July 26, 1991, the State moved for
15 clarification of psychological exams. On July
16 29, 1991, the Court ordered that either Dr.
Scolatti or Dr. Walters were to complete a
psychological evaluation of Mr. Fowler.
- 17 (2) On August 15, 1991, Mr. Fowler moved for
18 supervised visitation pending the examinations.
19 On August 21, 1991, the State moved to approve
20 placement of the youth and to withhold
21 visitation until the visitation was complete.
22 On August 22, 1991 this Court heard and granted
23 the State's motion for placement of Chris Fowler
24 with his natural mother, and granted the State's
25 motion to withhold visitation. The Court denied
Mr. Fowler's motion to move Chris Fowler to
foster care in Missoula. The Court ordered a
supervised Christmas visitation. During this
hearing, the State moved the Court to take
judicial notice of a transcript from a divorce
proceedings by Dana Fowler in which she detailed
abuse at the hands of Mr. Fowler. The Court
heard and granted this motion.
- 26 (3) On January 22, 1992, Mr. Fowler moved again for
27 supervised visitation. On February 13, 1992 he
filed a motion to dismiss the proceedings

DATE 2-6-95

1 SB 206

1 because Dr. Scolatti had not finished his
2 report. In a memorandum and order dated March
3 5, 1992 this Court denied that motion.

4 (4) Dr. Scolatti completed his psychological
5 evaluation on March 27, 1992. He recommended
6 that: (a) Mr. Fowler have no unsupervised
7 contact with the children, (b) that the custody
8 of Chris Fowler be transferred to his natural
9 mother, Janet Schofield, (c) that Chris Fowler
10 was in need of counseling, and (d) that Mr.
11 Fowler needed long-term counseling with a
12 therapist of his choice to work on issues of
13 anger management and parenting skills.

14 (5) On August 19, 1993, Mr. Fowler moved to set
15 visitation and to obtain a second opinion of Dr.
16 Scolatti's psychological evaluation. In a
17 hearing on September 20, 1993, this Court
18 granted the motion for a second opinion, ordered
19 that the State disclose all raw test data used
20 by Dr. Scolatti in his psychiatric evaluation,
21 and ordered that Dr. Walters should formulate a
22 visitation plan.

23 (6) In a hearing scheduled October 4, 1993, the
24 Court granted Ms. Schofield and Ms. Sutherland's
25 entry into this case. The Court denied Mr.
26 Fowler's motion for visitation during interviews
27 to be conducted by Dr. Walters. The Court
ordered Mr. Fowler to obtain a written proposed
treatment plan in regard to visitation from Dr.
Walters.

(7) On November 15, 1993, Mr. Fowler again moved for
temporary visitation. After a hearing, the
Court issued an order denying this motion based
upon: (a) the remaining unproven sexual abuse
allegations, (b) the potential for damage that
continued to exist with unsupervised visitation,
(c) the recent evaluation of Chris Fowler by
Thomas Hearn which supported Dr. Scolatti's
initial determinations, and (d) the failure of
Mr. Fowler to obtain long-term counseling.

(8) On November 24, 1993, Mr. Fowler moved to
bifurcate the property settlement issues from
the custody issues in the divorce proceedings.
On February 24, 1994, this Court assumed
jurisdiction over both divorce proceedings and
the motion to bifurcate was found to be moot.

1 As stated supra, the present motions pending before this Court
2 are Mr. Fowler's motions: (1) to dismiss the youths in need of
3 care proceedings or, in the alternative, to set an adjudicatory
4 hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a
5 treatment plan; and (3) to prevent the State of Montana from
6 financing the divorce/custody proceedings.

7 DISMISSAL OF THE YINC PROCEEDINGS

8 Under a Rule 12(c), Mont. Rules Civ. Pro. motion, in order
9 to dismiss a claim, the defendant must show beyond a doubt that
10 the plaintiff can prove no set of facts in support of his claim
11 which would entitle him to relief. Fraunhofer v. Price, 182
12 Mont. 7, 12, 594 P.2d 324, 327 (1979). Clearly, Mr. Fowler has
13 not shown beyond a doubt that there is a basis for dismissal of
14 this temporary investigative authority and protective services
15 action at this juncture.

16 HEARING PURSUANT TO §41-3-401(2), M.C.A.

17 Mr. Fowler argues that his "property" (i.e. children) have
18 been taken away from him without due process of law. He
19 contends that he has never had his "day in court" to contest the
20 merits of the initiating petition for temporary investigative
21 authority, and that the State of Montana has never addressed the
22 serious allegations that were originally made against him.

23 A review of the record in this case reveals that a portion
24 of the delay in bringing this case to a conclusion has been as
25 a result of the actions of Mr. Fowler. This Court has
26 maintained numerous show cause hearings in this matter. As
27 stated supra, at the most recent hearing, after listening to the

1 evidence, this Court found that Mr. Fowler had not complied with
2 Dr. Scolatti's recommendations for long-term and intensive
3 counseling. It was not until Mr. Fowler's pending motions were
4 fully briefed and before this Court that Mr. Fowler filed the
5 "Notice of Voluntary Compliance" with Dr. Scolatti's
6 recommendations.

7 In addition, although Mr. Fowler was granted his motion to
8 seek a second opinion of Dr. Scolatti's evaluation, he has never
9 provided substantive information to either the DFS or this Court
10 that would support re-unification of his family.

11 A review of the case law interpreting Title 41, Chapter 3,
12 Part 4 reveals that a show cause hearing is the only hearing
13 required when a petition for temporary investigative authority
14 is filed. In Re J.W. & J.C., 226 Mont. 491, 736 P.2d 960
15 (1987). The legislature never intended to consolidate a
16 petition to have youths declared in need of care (§41-3-401,
17 M.C.A.) and a petition for temporary investigative authority.
18 (§41-3-402, M.C.A.) Id. at 497-498. This Court's continued
19 authority in this case has been pursuant to the temporary
20 investigative authority statutes. Under those statutes, this
21 Court has the authority to require that Mr. Fowler undergo
22 psychological evaluation (§41-3-403(2)(c), M.C.A.), and it has
23 the authority to require that Mr. Fowler receive counseling
24 services. (§41-3-403(2)(c), M.C.A.). The State has never filed
25 a petition pursuant to §41-3-401, M.C.A. which would necessitate
26 that this Court set a date for an adjudicatory hearing. There
27 has never been an attempt by DFS to permanently remove the

1 children from the custody of Mr. Fowler. There has only been
2 a petition for temporary investigative authority and protective
3 services. The District Court has acted at all times pursuant
4 to §41-3-403, M.C.A. This statute gives the Court the authority
5 to provide immediate protective services, and it also authorizes
6 the District Court to use broad power to make continuing
7 arrangements for the children's protection. Matter of H.D., 256
8 Mont. 70, 76, 844 P.2d 114 (1992). The reason that Mr. Fowler
9 has never had his "day in court" to contest the allegations of
10 abuse or, as required in this case, his initial show cause
11 hearing, is because he reached a stipulation with DFS and the
12 initial show cause hearing was cancelled. This case has
13 proceeded thereon based upon the initial decisions of Mr. Fowler
14 to forego a show cause hearing which would have required the
15 State to present evidence establishing probable cause for the
16 issuance of the order for immediate protection. Now, three
17 years later, Mr. Fowler has decided that he wants his "show
18 cause" hearing whereby the State is required to establish
19 probable cause for the issuance of an order for immediate
20 protection.

21 This Court has the authority to continue to provide
22 temporary protective services to Mr. Fowler's children, and Mr.
23 Fowler should not be allowed to take this case back to square
24 one each time he hires a new attorney. Therefore, Mr. Fowler
25 has 10 days from the date of this order to submit: (1)
26 substantive information regarding a second psychological
27 evaluation which differs from the psychological evaluation

1 provided by Dr. Scolatti, and (2) substantive information
2 regarding his long term counseling on parenting skills and anger
3 control.

4 TREATMENT PLAN

5 Mr. Fowler contends that the State of Montana has never
6 implemented a treatment plan or attempted to reunify his family.
7 In this Court's Order which resulted from the November 15, 1993
8 hearing, explicit reasons were given why family re-unification
9 was not in the best interest of the children, and an explanation
10 was provided under what circumstances that temporary visitation
11 would be allowed in the future.

12 It is the policy of this State to provide protective services to
13 preserve the unity of the family (§41-1-111(1)(c), M.C.A.), it
14 is also the policy of this State to protect children whose
15 health and welfare are being adversely affected by the conduct
16 of those responsible for their care (§41-3-101(2), M.C.A.).
17 This Court will continue to provide protective services to those
18 children until the issues addressed in this Court's Order have
19 been resolved. Family unity will not be preserved at the
20 expense of the best interest of the children. In Re. M.N., 199
21 Mont. 407, 649 P.2d 749 (1982). As it is now Mr. Fowler's
22 contention that he is complying with Dr. Scolatti's
23 recommendations, this Court orders that Mr. Fowler file a
24 written proposed treatment plan within 10 days of the date of
25 this order. The DFS has 10 days thereafter in which to file its
26 written proposed treatment plan. Thereafter, a hearing will be
27 scheduled upon request of the parties.

1 FINANCING A DIVORCE PROCEEDINGS

2 Mr. Fowler has failed to explain how the State of Montana
3 is financing this divorce custody dispute.

4 ORDER

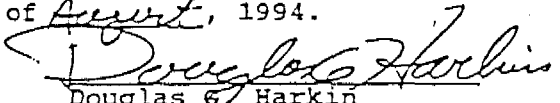
5 Based upon the foregoing, Mr. Fowler's motion to dismiss
6 is DENIED.

7 Mr. Fowler is hereby ordered to submit (1) a second
8 psychological evaluation, and (2) substantive information
9 surrounding the counseling he has received on parenting skills
10 and anger control.

11 Mr. Fowler is further ordered to submit a written, proposed
12 treatment plan within 10 days of the date of this order. DFS
13 has 10 days thereafter in which to submit its written proposed
14 treatment plan. A hearing will then be scheduled upon the
15 request of the parties.

16 Mr. Fowler's motion to prevent the State from financing the
17 divorce custody proceedings is without merit and DENIED.

18 DATED this 23rd day of August, 1994.

19 
20 Douglas E. Harkin
District Judge

21 cc: Patrick Flaherty
Attorney for William Fowler

22 Carol Everly
Attorney for Janet Pedersen

23 Kerry Newcomer
Attorney for Kelly Ball

24 Leslie Halligan
Deputy County Attorney

25 Margaret Borg
26 Attorney for Christopher and Jonathan Fowler
27

EXHIBIT 'D'

EXHIBIT 3DATE 2-6-95SB 206

RECEIVED

NOV 30 1994

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 94-459

WILLIAM V. FOWLER,
Petitioner,

v.

THE DISTRICT COURT OF THE
FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE
COUNTY OF MISSOULA, and THE
HONORABLE DOUGLAS G. HARKIN,
Presiding Judge,

Respondents.

PAT FLAHERTY
ATTORNEY AT LAW

ORDER
FILED

NOV 29 1994

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

Petitioner, William V. Fowler (Fowler), by counsel, has filed herein his Petition for Writ of Supervisory Control and supporting brief requesting that this Court issue a writ "directing the District Court to dismiss the case or to set a Hearing [sic] within 30 days on Mr. Fowler's right to contest the underlying allegations that resulted in the ex parte removal of his children from his home." Fowler's Petition is vigorously opposed by the District Court, by each of the mothers of the two children involved and by the Department of Family Services.

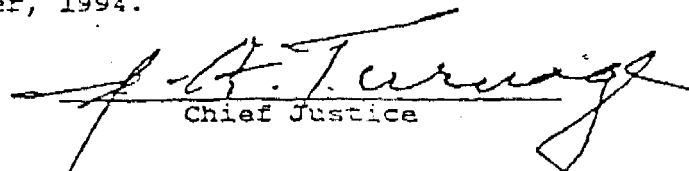
While this case has been pending for some time, it must also be noted that the allegations in the underlying proceedings involve child sexual abuse. It also appears that the District Court is

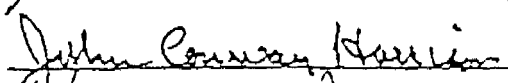
acting within its jurisdiction and is attempting to protect the best interests of the children involved; is not acting under any mistake of law; has already held various hearings at which Fowler has appeared personally and by counsel; has entered various orders to move this case along toward a final resolution; and has scheduled further proceedings to that end. Moreover, it appears that Fowler himself has not complied fully with certain court orders. Finally, there is an adequate remedy of appeal from any and all final judgments of the District Court. Accordingly, there being no basis for this Court's assumption of original jurisdiction of this cause, Fowler's petition should be denied.

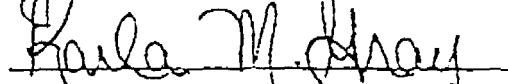
IT IS ORDERED that Mr. Fowler's Petition for Writ of Supervisory Control should be and the same is, hereby, DENIED.

IT IS FURTHER ORDERED that the Clerk of this Court forthwith give notice of this order by mail to all counsel of record and to the Hon. Douglas G. Harkin, Presiding.

DATED this 29th day of November, 1994.


Chief Justice


John Conway Harrison


Paula M. Gray


William E. Hunter


Tony Trivette


James S. [unclear]


Justices

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2-6-95
FILE NO. SB 206

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

STATE OF MONTANA, JOSEPH
MAZUREK, Attorney General for the State of
Montana, DEPARTMENT OF FAMILY
SERVICES,

Defendants.

No. CV95-1-M-CCL

APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, William V. Fowler, and hereby moves the court, pursuant to 28 U.S.C. §2201 and Rule 65(b) of the Federal Rules of Civil Procedure, for an Order restraining the Defendants, the State of Montana, Joseph Mazurik, Attorney General for the State of Montana, and the Department of Family Services, or their attorneys, from enforcing M.C.A. §§41-3-402, 41-3-403 in a manner that deprives Montana parents generally, and the Plaintiff in particular, of notice and hearing before having their parental rights terminated or diminished, until Plaintiff's Motion for Preliminary Injunction can be heard and determined,

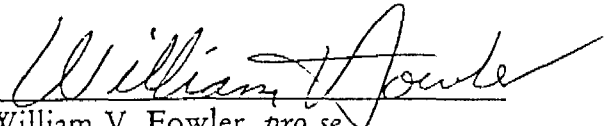
and for an Order setting a date for such hearing.

The unconstitutional application by the defendants of the statutes challenged in the Plaintiff's Complaint in the instant action is imminent and continuing, and the Plaintiff has no adequate remedy at law other than to petition this Court on an emergency basis for a Temporary Restraining Order pending a determination of his application for preliminary Injunction.

The Defendants have been notified by personal service of the Plaintiff's intention to seek injunctive relief.

This application is made on the grounds that the Plaintiff will suffer immediate and irreparable loss, damage or injury before the defendants or thier attorneys can be heard in ~~opposition~~ to this Application, and that the defendants have illegally and unconstitutionaly effected a continuing *de facto* termination of the plaintiff's parental rights, as is described in the attached affidavit, and as is more fully recounted in the COMPLAINT filed in this case, and in the Plaintiff's MOTION FOR INJUNCTION and the supporting memorandum, copies of which have been filed herewith.

Dated this 10 day of Jan, 1995.


William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

EXHIBIT' 4
DATE 2-6-95
1 SB 206

William V. Fowler, *pro se*
3700 Russel. Suite B-101
Missoula, MT 59801

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER	)	
	)	No. CV95-1-M-CCL
Plaintiff,	)	
	)	
vs.	)	
	)	
STATE OF MONTANA,	)	
JOSEPH MAZUREK,	)	
Attorney General for the State of	)	
Montana, DEPARTMENT OF FAMILY	)	
SERVICES,	)	
	)	
Defendants.	)	

AFFIDAVIT

STATE OF MONTANA	}	
	:	ss.
COUNTY OF MISSOULA	}	

I, William V. Fowler am the Plaintiff in the above-entitled action and do hereby make the following declaration, under oath, in support of my complaint:

1. That I was adjudicated a joint custodial parent of Jonathan and Christopher Fowler, and that Christopher Fowler were in my care and custody as primary custodial parent and caregiver until June 14, 1991.

2. That on June 14, 1991 the Missoula County Attorney, at the behest of the Montana Department of Family services, filed an affidavit alleging probable cause to assume temporary investigative authority, specifically alleging abuse of Jonathan by Christopher Fowler.

3. That based solely on the affidavit mentioned in paragraph 2, above, and solely under their temporary investigative authority, Christopher Fowler was removed from my custody, and my right to have any contact with either of my sons was terminated.

4. That under the guise of a "temporary" investigative authority, I have been deprived of all of my parental rights in Jonathan and Christopher Fowler for almost four years.

5. That throughout the nearly four years since the State took my children from me, I have continually insisted upon, but have never been afforded, any hearing at which I could challenge the underlying allegations that were asserted in order for the state to assume its "temporary" investigative authority.

6. That, as evidenced by the order of the district court, and the opinion of the Montana Supreme Court, (copies attached) the State has acted solely pursuant to its authority to assume temporary investigative authority under M.C.A. §§41-3-402 and 41-3-403.

7. That the acts of the State of Montana, and the Department of Family Services, under the authority of Joseph Mazurek, the State Attorney General, have effectively terminated my parental rights without affording me notice and a hearing at which I could challenge the myriad of allegations made against me, said unsubstantiated allegations being the sole basis for the State preventing me from seeing my children.

8. That the acts of the defendants are continuing, and have caused and continue to cause me irreparable harm in that I have lost valuable years of the potential relationship between myself and my sons that can never be recovered.

9. That I have personal knowledge that the state has not only acted in excess of its authority to violate my personal parental rights, but that it is the policy of the state, as ratified by the Montana Supreme Court, to violate parental rights generally by exercising statutorily "temporary" authority for periods of time in excess of years.

EXHIBIT 4
DATE 2-6-95
3 SB 206

Further the affiant sayeth not.

Signed this 10 day of Jan, 1995.

William V. Fowler
William V. Fowler
3700 Russell, Suite B-101
Missoula, MT 59802
(406) 728-4334

On this 10th day of January, 1995, before me, the undersigned Notary Public, in and for the State of Montana, personally appeared William V. Fowler, and proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Anna F. Au
Notary Public in and for
the State of MT
Residing at: Missoula
My commission expires:
5/20/98

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

STATE OF MONTANA, JOSEPH
MAZUREK, Attorney General for the State of
Montana, DEPARTMENT OF FAMILY
SERVICES,

Defendants.

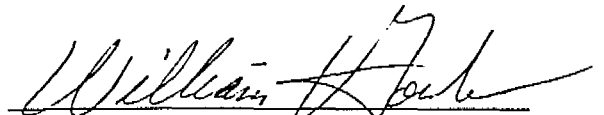
No. CV95-1-M-CCL

NOTICE OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO: Joseph Mazurek
Attorney General for the State of Montana
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401

Notice is hereby given that the Plaintiff will seek a Temporary Restraining Order on the ___ day of ___, 1995, at the hour of ___ o'clock __.m., or as soon thereafter as the parties may be heard, at which time the Defendants shall appear to show cause, if any they have, why the relief requested in their request for a Temporary Restraining Order and Complaint, copies of which are attached hereto, should not be granted.

Dated this 10 day of Jan, 1995.


William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

STATE OF MONTANA, JOSEPH
MAZUREK, Attorney General for the State of
Montana, DEPARTMENT OF FAMILY
SERVICES,

Defendants.

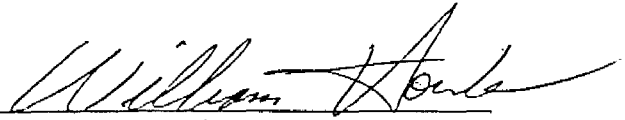
No. CV95-1-M-CCL

NOTICE OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO: Joseph Mazurek
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401

Notice is hereby given that the Plaintiff will seek a Temporary Restraining Order on the ___ day of ___, 1995, at the hour of ___ o'clock __.m., or as soon thereafter as the parties may be heard, at which time the Defendants shall appear to show cause, if any they have, why the relief requested in their request for a Temporary Restraining Order and Complaint, copies of which are attached hereto, should not be granted.

Dated this 10 day of Jan, 1995.


William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

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Missoula, Montana 59801
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

STATE OF MONTANA,
JOSEPH MAZUREK,
Attorney General for the State of
Montana, DEPARTMENT OF FAMILY
SERVICES,

No. CV95-1-M-CCL

NOTICE OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO: Department of Family Services
602 Woody
Missoula, MT 59801

Notice is hereby given that the Plaintiff will seek a Temporary Restraining Order on the ____ day of _____, 1994, at the hour of _____ o'clock ____ .m., or as soon thereafter as the parties may be heard, at which time the Defendants shall appear to show cause, if any they have, why the relief requested in their request for a Temporary Restraining Order and Complaint, copies of which are attached hereto, should not be granted.

Dated this 10 day of Jan, 1995.

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

STATE OF MONTANA,
JOSEPH MAZUREK,
Attorney General for the State of
Montana, DEPARTMENT OF FAMILY
SERVICES,

Defendants.

No. CV95-1-M-CCL

ORDER

The Court, having been presented with a Complaint, Affidavit, Application for Injunction or Declaratory Relief and supporting Memorandum, and an Application requesting a temporary order restraining the State of Montana, Attorney General Joseph Mazurek, the Montana Department of Family Services, their agents, or their attorneys, from enforcing the provisions of M.C.A. §41-3-402 and §41-3-403 so as to deprive Montana parents of their right to due process prior to having their parental rights diminished or terminated, until Plaintiff's Motion for Preliminary Injunction can be heard and;

The Court being of the opinion that the Plaintiff's motion is supported by good and sufficient cause,

IT IS ORDERED that the above named defendants, their agents and attorneys be temporarily enjoined from removing children from their custodial parents without affording them prompt hearings to determine the probable cause for such removal, and an adjudicatory hearing to determine the truth or falsity of any allegations on which the State relies in asserting its authority to remove children from their custodial parents, pending further action of the Court.

IT IS FURTHER ORDERED that Defendants appear before this Court on the ____ day of _____, 1995, at the hour of _____ o'clock ____ .m., or as soon thereafter as the parties may be heard, to show cause, if any they have, why the relief requested in the Complaint should not be granted.

Dated this ____ day of _____, 1995.

U. S. DISTRICT COURT JUDGE

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

JOSEPH MAZUREK,
Attorney General for the State of
Montana, et al.,

Defendants.

)
) No. CV95-1-M-CCL
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MOTION FOR PRELIMINARY INJUNCTION

COMES NOW the Plaintiff, moves this court for an Order preliminarily enjoining the defendant, Joseph Mazurek, his agents, and subordinates, and the Department of Family Services, from enforcing or taking any action pursuant to M.C.A. §41-3-402 and §41-3-403 until such time as this court has reviewed and made a final decision regarding the constitutionality of said statutes. Alternatively, the Plaintiff requests that this court issue an order requiring the State of Montana to hold an adjudicatory hearing to determine the underlying accusations of abuse and/or neglect within a reasonable period of time (perhaps 60 or 90 days) after the state seizes children pursuant to a "temporary investigative authority." In support of his Motion, the Plaintiff states as follows:

EXHIBIT : 4
DATE 2-6-95
§1 SB 206

1. The defendant, Joseph Mazurek, through his agents and subordinates, particularly the Department of Family Services, is charged with enforcing the laws of the State of Montana, including M.C.A. §41-3-402 and §41-3-403.

2. In enforcing M.C.A. §41-3-402 and §41-3-403 out of the context of the statutory framework in which it appears, Joseph Mazurek is acting in pursuance of an unconstitutional statute (or more accurately, enforcing an apparently valid statute in an unconstitutional manner), and is thus acting in his individual capacity.

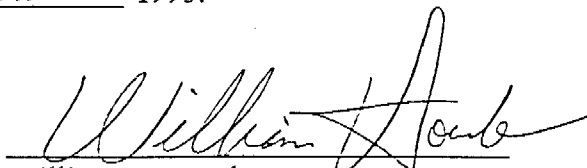
3. This court has jurisdiction to enjoin the enforcement of M.C.A. §41-3-402 and §41-3-403 pending its determination of the Plaintiff's challenge to the constitutionality of said statutes pursuant to 28 U.S.C. §1651(a) and F.R.C.P Rule 65.

4. Failure of the court to enjoin defendant Mazurek from enforcing the challenged statutes will result in immediate irreparable harm to the Plaintiff, as well as other affected parents in the state of Montana.

5. The Plaintiff has no adequate remedy at law, and thus seeks to avail himself of this court's equitable jurisdiction.

WHEREFORE, the Plaintiff prays that this court issue the requested injunction, as is more fully supported by the accompanying memorandum of law.

SUBMITTED this 10 day of Jan 1995.


William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER

Plaintiff,

vs.

JOSEPH MAZUREK,
Attorney General for the State of
Montana, et al.

Defendants.

No. CV95-1-M-CCL

MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

In support of his motion for a Preliminary Injunction enjoining defendant Joseph Mazurek from enforcing M.C.A. §41-3-402 and §41-3-403 until such time as this court has reviewed and made a final decision regarding the constitutionality of said statutes, the Plaintiff states as follows:

I.

This Court Has Jurisdiction To Issue The Requested Injunction.

This court has jurisdiction to entertain suits seeking to enjoin a state official from enforcing an unconstitutional statute pursuant to 28 U.S.C. §1651 and F.R.C.P. Rule 65. Such a suit is not a suit against the State of Montana, but is a suit against a state official, Joseph Mazurek, in his individual capacity, since the unconstitutional nature of the statute renders the enforcement thereof an illegal act, which is outside the scope of official duty. *Osborn v. Bank of the United States*, 9 Wheat 728 (1824); *Board of Liquidation v. McComb*, 92 U.S. 531 (1876); *Poindexter v. Greenhow*, 114 U.S. 270 (1885); *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362 (1894); *Smyth v. Ames*, 169 U.S. 466 (1898); *Ex parte Young*, 209 U.S. 123 (1908); *Truax v. Raich*, 239 U.S. 33 (1915); *Public Service Co. v. Corboy*, 250 U.S. 152 (1919); *Sterling v. Costantin*, 287 U.S. 378 (1932); *Davis v. Gray*, 16 Wall. 203 (1873); *Tomlinson v. Branch*, 15 Wall. 460 (1873); *Litchfield v. Webster Co.*, 101 U.S. 773 (1880); *Allen v. Baltimore & Ohio R. Co.*, 114 U.S. 311 (1885); *Gunter v. Atlantic C. L. R. Co.*, 200 U.S. 273 (1906); *Prout v. Starr*, 188 U.S. 537 (1903); *Scott v. Donald*, 165 U.S. 58; also 165 U.S. 107 (1897).

This court has jurisdiction to issue an injunction enjoining the enforcement of M.C.A. §41-3-402 and §41-3-403 until such time as this court has reviewed and made a final decision regarding the constitutionality of said statutes as applied. *Ex parte Young, supra*.

II.

The Challenged Statutes Have Been Interpreted By The Montana State Courts..

Even if the Montana State Courts had not previously interpreted M.C.A. §41-3-402 and §41-3-403, and even if defendant Mazurek had not enforced said statutes in a manner so as to

violate the constitutional rights of the citizens of Montana, this court would have jurisdiction to preemptively interpret said statutes, especially in light of the manifest oppression that has resulted from the enforcement of said statutes. *Ex parte Young, supra; Home telephone & Telegraph Co. v. Los Angeles*, 227 U.S. 278 (1913); *Traux v. Raich*, 239 U.S. 33 (1915); *Cavanaugh v. Looney*, 248 U.S. 453 (1919); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Hygrade Provision Co. v. Sherman*, 266 U.S. 497 (1925); *Massachusetts State Grange v. Benton*, 272 U.S. 525 (1926); *Hawks v. Hamill*, 288 U.S. 52 (1933); *Georgia R. v. Redwine*, 342 U.S. 299 (1952).

However, this court need not preemptively interpret the challenged statutes, because the Montana Supreme Court has already done so, as shall be illustrated herein. The Plaintiff bases his claims of unconstitutionality on the challenged statutes as they have been interpreted by the Montana Supreme Court.

The Plaintiff relies on the interpretation of M.C.A. §41-3-402 and §41-3-403 by the Montana Courts to support his contention that the challenged statutes are unconstitutional. Although said statutes are not unconstitutional on their faces, the statutes are violative of fundamental constitutional rights as they are interpreted by the courts and applied by defendant Mazurek. M.C.A. §41-3-402 and §41-3-403 read as follows:

41-3-402. Petition for temporary investigative authority and protective services.(1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or

an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

To understand the impropriety of the Montana Court's interpretation of these two sections, it is helpful to examine the statutory context in which they appear. Viewing Part 4 of Chapter 3, Title 41, M.C.A. as a whole, the above two sections would appear to be an integral part of the statutory scheme dealing with youths who are in need of care. Title 41 pertains to minors generally, and Chapter 3 covers child abuse, neglect and dependency. Parts 3 and 4 of Chapter 3 deal with emergency protective care of children who are alleged to be abused and/or neglected. Part 3 specifies the situations in which emergency protective services are called for, the state's responsibility in providing such services, and representation of affected youths by a guardian *ad litem*. Part 4 covers the process for implementing emergency protective services of youths in need of care.

On its face, Part 4 would appear to encompass sufficient procedural safeguards to ensure that a parent received due process prior to having his or her children permanently seized by the state. The first section in Part 4 appears to cover all petitions filed by the state which allege abuse, neglect, or dependency of a minor child. It states in pertinent part:

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, . . . shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, . . . may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.

* * * * *

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody

* * * * *

M.C.A. §41-3-401 [emphasis added]. Following this section, §41-3-402 further explains the use and procedure for obtaining the temporary investigative authority specified in §41-3-401. Section 41-3-402 makes no reference whatsoever to any type of notice or hearing. It does specify that "the petition for temporary investigative authority shall be supported by an affidavit of probable cause." Following section 41-3-402, section 41-3-403 guides the court's immediate action after the filing of a petition requesting temporary investigative authority. Section 41-3-403 requires that a probable cause hearing to establish the necessity of assuming temporary investigative authority be conducted within 20 days of the issuance of the order granting temporary investigative authority.

On its face, the statutory scheme dealing with the state's intervention where child abuse is alleged would seem to protect the rights of parents as well as children. The plaintiff emphasizes that the following description is based on how the law plainly reads, rather than how the courts have implemented the law. If a situation of alleged abuse is serious enough for the state to intervene and remove a child from a dangerous environment, a petition detailing the situation and the intended intervention must be filed within 48 hours (M.C.A. §41-3-301). Said petition must conform to the requisites of M.C.A. §41-3-401. If the petition seeks temporary investigative authority, it must be supported by an affidavit of probable cause in which the county attorney personally verifies the reasons that a temporary investigative authority is needed. (M.C.A. §41-3-402). In all cases where abuse is alleged, the court must set a priority date for an adjudicatory hearing (M.C.A. §41-3-401(2)), and if temporary investigative authority is sought, the court must set a date for a probable cause

hearing within 20 days of the filing of the petition (M.C.A. 41-3-403(1)(c)). This scheme allows the state to intervene when there is reason to believe a youth is in danger and in need of care. At the same time, it allows a parent an initial hearing in which he or she can challenge the allegations of probable cause for state intervention, and a prompt adjudicatory hearing at which the matters alleged by the state can be disputed according to the rules of evidence and civil procedure. Further, the statutes provide for the allegations leading to state intervention to be reviewed at least three times prior to temporary investigative authority being authorized: first, under M.C.A. §41-3-301, a case worker from the Department of Family Services makes an initial determination that a youth is in immediate or apparent danger of harm; second, a county attorney, attorney general, or other independent attorney must personally sign an affidavit confirming the results of the DFS caseworker's investigation (§§41-3-401, 402); third, a judge must review the conclusions of both the DFS caseworker and the attorney who has filed the supporting sworn affidavit, and determine if an order for the immediate protection of the youth is warranted (§41-3-403).

The above description and analysis of the statutory scheme dealing with youths alleged to be in need of care is based on the wording and structure of the law itself.¹ However, this is not how Montana courts and enforcement authorities view these statutes. Montana courts do not read the statutes dealing with minors as a coherent whole. Rather, the courts and

¹ This interpretation of the statutory scheme is not based solely on the plaintiff's opinion. Relatively similar statutory frameworks exist in other states, one of which is the State of Connecticut. Excerpts of the Connecticut statutes are juxtaposed with the Montana Statutes in EXHIBIT III, attached hereto, and incorporated herein by reference. The Connecticut Supreme Court's analysis of said statutes is included in the Annotation attached as EXHIBIT IV, and incorporated herein by reference (*In Re Juvenile Appeal*, 189 Conn 276, 455 A.2d 1313, 38 ALR 4th 736 (Conn. 1983)).

enforcement authorities admittedly view M.C.A. §§41-3-402 and 41-3-403 as isolated grants of authority by which the State can and does remove children from their custodial parents without due process of law, as the following statements by the Montana courts indicate.

The Montana district court has stated that the cessation of parental rights can continue for periods of many years under the state's "temporary investigative authority and protective services" John Harkin's Memorandum and order, Cause No. J-2689, In the Matter of Declaring Christopher Fowler and Jonathan Fowler Youths in Need of Care (attached as EXHIBIT I and referred to hereinafter as Harkin Order), at p. 4. How do the Montana courts circumvent the requirement of M.C.A. §41-3-401(2) that an adjudicatory hearing be given priority on the court docket? They hold that "the legislature never intended to consolidate a petition to have youths declared in need of care (§41-3-401, M.C.A.) and a petition for temporary investigative authority (§41-3-402, M.C.A.)." Harkin Order at p. 5.

In holding that §41-3-401 and §41-3-402 are unrelated, the courts ignore the following facts: first, that it is §41-3-401(10)(a) and (b) that give the authority to request the temporary investigative authority and protective services under section 41-3-402; second, on its face §41-3-401 applies to all petitions alleging abuse, neglect or dependency; and third, the filings in Cause No. J-2689, as well as every other petition requesting temporary investigative authority, indicate on their faces that they are indeed "Youth In Need Of Care" proceedings, as described in §41-3-401.

Despite the fact that §41-3-401 mandates an adjudicatory hearing, the Montana courts hold that by denying the integral nature of the statutes dealing with youths in need of care, it can avoid an adjudicatory hearing ever being held, even though the underlying allegations

allege child abuse and neglect: "The state has never filed a petition pursuant to 41-3-401, M.C.A. which would necessitate that this Court set a date for an adjudicatory hearing." Harkin Order at p. 5. Montana state courts further hold that so long as the state characterizes its actions as temporary, it can effect a *de facto* termination of parental rights without an adjudicatory hearing: "There has never been an attempt by DFS to permanently remove the children from the custody of Mr. Fowler. There has only been a petition for temporary investigative authority" Harkin Order at p. 6. "A review of the case law interpreting Title 41, Chapter 3, Part 4 reveals that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed." Harkin Order at p. 5. How long is "temporary" according to Montana courts? In the Plaintiff's case the State has taken his children, and terminated all contact with them for over three and one half years. *In the matter of F.H., J.K., and B.K.*, 51 St.Rep. 0649 (1994), "temporary" was thirteen years. In fact, Montana courts hold that any length of time necessary for the state to maintain custody until a minor reaches age 18 is "temporary." *Id.* ²

The State of Montana contends that M.C.A. §§41-3-402 and 41-3-403 each stand independently from the rest of the Montana Code. This flies in the face of statutory accepted interpretation, which requires that these statutes be read in conjunction with other statutes dealing with state intervention for the protection of the children. *In Re Juvenile Appeal*, 189 Conn 276, 455 A.2d 1313, 38 ALR 4th 736 (Conn. 1983). Pursuant to the challenged statutes,

² *In the Matter of F.H., J.K., and B.K.*, the court contended that it "did not terminate S.T.'s parental rights . . ." but instead merely "granted DFS temporary custody until B.K. and F.H. reached age eighteen." This is a blatant, disingenuous, and hypocritical way for the state to steal children without troubling itself with the requirement of notice and hearing to determine whether the facts warrant terminating parental rights.

the defendant has exercised the authority to take children from their parents indefinitely without the necessity of a hearing on the underlying reasons for the state's intervention: "The District Court has acted at all times pursuant to 41-3-403, M.C.A. This statute gives the Court the authority to provide immediate protective services, and it also authorizes the District Court to use broad power to make continuing arrangements for the children's protection." Harkin Order at p. 6. The court contends that under the authority of §41-3-403, which on its face covers only court orders ensuing from petitions for temporary investigative authority, it can effect permanent custody of children under the guise of "continuing arrangements" resulting from a request for immediate protective services. How long can these "continuing arrangements" last? According to Montana courts, the state can continue to "protect" children without an adjudicatory hearing for as long as an individual judge pleases. "This court has the authority to continue to provide temporary protective services to Mr. Fowler's children." Harkin Order at p. 6.

The interpretation of M.C.A. §§41-3-402 and 41-3-403 related above is not the construction of an individual renegade judge; it is the holding of the Supreme Court of the State of Montana. Shortly after Judge Harkin extolled his power and authority to order children removed from their parents without the necessity of ever having any adjudicatory hearing, the Plaintiff presented Harkin's reasoning to the Montana Supreme Court, requesting that they exercise their supervisory jurisdiction over the lower court. In response, the Montana Supreme Court ratified Judge Harkin's interpretation of the law and adopted it as their own. The Montana Supreme court held that the lower courts are within their jurisdiction when they remove children from their parents for indefinite periods of time

without affording the affected parents the opportunity to be heard at an adjudicatory hearing. The Montana Supreme Court held that when the district court removed the Plaintiff's children, restrained any contact with them, and did so without any opportunity for the Plaintiff to be heard, it was "acting within its jurisdiction." Montana Supreme Court Opinion in Case No. 94-459 at p. 1-2. (attached as EXHIBIT II). It further held that in acting pursuant to authority purportedly granted by the challenged statutes (M.C.A. §§41-3-402 and 41-3-403), the district court "was not acting under any mistake of law." *id.*

The state's position on M.C.A. §§41-3-402 and 41-3-403 is clear: The state contends that pursuant to the authority granted in those sections standing alone, it can take children from their parents based solely on the allegations of a DFS bureaucrat, which are then rubber stamped by a county attorney. After a hearing establishing nothing more than probable cause³ to conduct further investigation, the state can retain custody of the children until the child reaches age 18. Parents are never entitled to an adjudicatory hearing in which to challenge the underlying allegations of abuse, so long as the state purports to be acting under the authority of §§41-3-402 and 41-3-403, rather than under §41-3-401. When the state removes a child from their parents, and terminates all contact between parent and child until the child reaches 18, they have in fact terminated the parental rights of the parent. According to the state, they can effect such a termination with nothing more than demonstrating probable cause to conduct an investigation. The state's assertion of authority to take children from their parents without the opportunity of a hearing is given effect by the defendant Joseph Mazurek, utilizing the police power of the State of Montana.

³ In the Plaintiff's case, even a probable cause hearing was denied.

III.

The Challenged Statutes Violate A Fundamental Constitutional Right.

The rights of parents to raise their own children is a fundamental liberty interest recognized at common law and protected by the Constitution. "The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights of man,' and 'rights far more precious . . . than property rights. . . . The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment." (Citations omitted.) *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972). A parent's liberty interest in their own children is a natural and legal right. *Moss v. Vest et al.*, 262 P.2d 116 (Idaho, 1953). Although the right to parent one's children is burdened with concomitant responsibilities, and although the state has a legitimate interest in protecting children from abuse, it is still the state that has the burden of overcoming the *prima facie* case favoring parental custody once the parent-child relationship is established. *Id.* at 119.

Once it is established that a fundamental right is being affected, the following question arises: what procedural process is necessary before the state can remove a child from its parents? In the Plaintiff's case, this issue need not be addressed, because the state afforded the Plaintiff no notice, no hearing, and what amounts to no procedural due process whatsoever. However, the Plaintiff's case notwithstanding, the state of Montana claims that the only

procedural due process necessary for it to remove a child from its parents, and maintain custody of that child with the state Department of Family Services, is that of establishing probable cause to do an investigation. The courts in Montana are absolutely clear on this point. The state can assume "temporary" authority under M.C.A. 41-3-402, and the only hearing necessary is a preliminary probable cause hearing. At that hearing, the common practice in Montana is for a county attorney to ratify a DFS worker's allegation of abuse. No investigation whatsoever need be done on the part of the county attorneys, who sign their names to sworn affidavits without personally ascertaining the truth or falsity of the allegations made therein. Once probable cause to conduct an investigation is established, the state claims the authority, again under §§41-3-402 and 41-3-403, to grant "temporary" custody to DFS until the child reaches age 18.

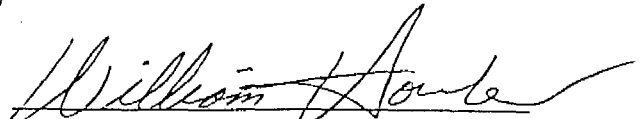
IV.

The Necessity For An Injunction To Issue.

The defendant continues to proceed in enforcing the challenged statutes, in violation of the due process rights of parents, and will continue to do so unless stopped. Every day that the defendant is allowed to proceed under the unconstitutional authority of the challenged statutes, Montana families, both parents and children, are harmed. The state has made its final determination regarding the application of the challenged statutes, and its interpretation is clear: children can be taken from their parents and made wards of the state until they reach eighteen years of age, with no more than a showing of probable cause to

EXHIBIT 4
DATE 2-6-95
31 SB 206

SUBMITTED this 10 day of Jan, 1995.


William V. Fowler, pro se
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

CERTIFICATE OF SERVICE

I hereby certify that on this day I placed a true and correct copy of the foregoing Motion for Preliminary Injunctio and Supporting Memorandum in the U.S. mail, postage prepaid, addressed as follows:

Joseph Mazurek
Attorney General for the State of Montana
215 N. Sanders
P.O. Box 201401

Department of Family Services
602 Woody
Missoula, MT 59801

Dated: Jan 11, 1995

By: Paul B. B. B.

conduct an investigation into alleged abuse. According to the state, no finding of abuse is necessary. A preliminary injunction is warranted because of the continuing, imminent and irreparable nature of the damage being caused based on the enforcement of the challenged statutes. This harm will continue if a preliminary injunction does not issue.

The Plaintiff has already suffered irreparable injury at the hands of the defendant due to the loss of consortium between himself and his sons. There is no remedial measure that can restore the time and experience lost between a parent and child when the state wrongly steals a child from the parent. The potential harm caused by the state's oppressive practice whereby it swoops down and snatches children, with no due process safeguards whatsoever, eclipses the state's alleged motives to protect the best interests of children. The state's warped, fascist-like actions have the potential of causing more harm than they prevent. Every day that the state is allowed to break up families and effect *de facto* terminations of parental rights under the challenged statutes, results in irreparable injury to the people of Montana. Without an injunction issuing from this court, the defendants will continue to overstep their bounds, operating on their own *ex ante* conclusions, rather than findings of fact and conclusions of law that would result if the state of Montana subscribed to the concept that citizens are entitled to due process of law.

V.

CONCLUSION

The defendants' assertion of power is admitted and absolutely clear: they claim the authority to take a child from their parents and terminate their parental rights, with nothing more than a showing of probable cause to investigate allegations of abuse. This scheme violates the most fundamental concepts of due process. It is a scheme worthy of the most despicable tyrants and treasonous usurpers of basic human rights, a description that aptly describes judge Harkin in particular, and the members of the Montana state judicial system and their executive branch cohorts generally. Without the intervention of this court, the usurpation of rights and rule by the whim of bureaucrats, rather than by rule of law, will continue unimpeded.

A parent who has lost his or her children has little else left to lose. There are few situations which would cause a law abiding citizens to exercise their first prerogative of self government: that right which was exercised to the detriment of many a British soldier in the year 1776. Having one's children kidnapped by gestapo-like government agents is one such situation. The federal courts are the next-to-last resort that citizens have to remedy the actions complained of herein. It is imperative that this court act, so that We, the People, need not reach that last resort.

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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-6-95
CJL NO. 56 206

Ladies and Gentlemen I am here today to speak in support of Senate Bill 206. I have no intentions of speaking poorly or against the Child Protective System of Montana. I do however, have a story to tell all of it fact!

I have a friend who came from a home in Central Montana where he was raised with traditional Christian values and beliefs by his mother and grandmother and, the home was in my opinion abuse free. My friend attended University of Montana in Missoula at age 18. Briefly before dropping out to pursue his true career love " Law Enforcement". He applied to several agencies in the area but, due to poor economic conditions at this time he was unable to find work. During this period he met a girl and fell in love and got married at age 19. Due to the added responsibility of a wife they moved to Billings Mt.

Where he figured they had a better chance of being financially able to support a family. He worked at various jobs including starting his own company yet still testing for any Law Enforcement positions that came along. In April 1987 he was 20 when their first child was born, this was the proudest moment of his lifetime. But due to the added responsibility of a child he became even more diligent in finding a means of support for his family.

He soon realized that if he was going to make it in Law Enforcement that he needed some formal training. So he received his Associate of Applied Science Degree in Law Enforcement in June 1990 . He was 22years of age.

During this two year period his wife began showing a severe lack of responsibility as well as disclosing memories of past abuse from both her father and older sister of sexual and physical

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~~abuse~~. My friend and his wife attended numerous counseling sessions to address her anger, pain; abuse and their marital problems, however, his wife was apparently unwilling to address the problems, or at best unable too. Subsequently they divorced in February 1990. She was given primary custody of the child. In March 1990 she called her ex-husband threatening suicide(because she had broken up with a boyfriend.) Her ex-husband advised her to get some professional help. He also volunteered to help by taking the child early(before his summer visits) so as she could get her problems worked out with out the pressure and responsibility of raising and caring for a child, she agreed.

Soon after he took custody he saw some glaring signs of physical abuse on his daughter. After numerous phone visits with her sister who she (ex-wife) had lived with, he confirmed that not only abuse was going on but, his ex-wife was also using illegal drugs. Which resulted in the sister kicking her out, his ex-wife was now living in her car. Due to all these circumstances my friend returned to court to gain full custody of his daughter, it was granted. During the time of custody in Glendive he continued school and provided the best of daycare and babysitters for his daughter when he was away. He and his daughter had a relationship that rivaled any father - daughter relationship I've ever seen. She was ecstatic when he would pick her up from daycare. They often played in the yard, at the park, and played games in the house before her bedtime. They also attended church on sundays.

During this time her mother never called to visit or to talk

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did she ever inquire or ask about her mother.

In August 1990 my friend and a classmate moved to Lolo, Mt to put their college degrees to work either as security guards or police officers. However, nothing was available at this time so they both went to work at a retail store in Missoula. This arrangement worked out well at first as one would work during the day the other at night. My friends daughter was always with a responsible adult. Soon however, their work schedules became the same and the need for daycare arose. As funds were extremely tight and all daycare center's rosters full, my friends ex-wife's parents volunteered to watch his daughter for a few hours every day when he worked. He was of course extremely sceptical because of all the stories he had heard but, after several visits that were monitored by my friend. He felt more at ease leaving his daughter with the maternal grandparents. At about this time the mother moved back into the area and my friend and his ex-wife began talking reconciliation, after a lot of convincing conversation from his ex-wife and her family.

In September 1990 his daughter had blood in her urine which was noticed by the maternal grandmother during an extra visit.

My friend immediately took his daughter to a clinic where she was diagnosed with a urinary tract infection. The doctor did not alert anyone to the possibility that a three year old girl with a urinary tract infection may have been sexually abused.

So no action was taken except typical treatment of the infection.

In October 1990 they found out that they were going to be blessed with their second child. Again my friend diligently pursued his career and volunteered for more hours at his current

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Approximately 1 week before Thanksgiving 1990 my friend and his ex-wife went over to the grandparent's house to pick-up their daughter. When they arrived they found there daughter sitting on the floor in what I would describe as a listless state; she appeared to have^{HAD} her personality completely removed. She wasn't happy to see her father or mother, she wasn't interested in any kind of activity: play, eating sleep, television, nothing. When my friend inquired as to the reason for this behavior or rather the lack of behavior, the grandparents responded "SHE'S BEEN LIKE THIS ALL DAY". When mother and father questioned their daughter at home; she stated that her grandfather had hurt her. When asked how she was unable to state how, just that he said bad things about her dad. Mom and dad were to say the least OUTRAGED. However , after a visual exam by mom and dad no signs of physical abuse were found. So to prevent any further instances they wrote a letter to the grandparents condemning their actions and denying any further visits with their granddaughter. That was the end, so they thought.

Soon after my friend and ex-wife moved to California (approx. June 1991) his daughter now 4 years old and my friend now 24 years old. He got a job as a security guard and advanced through the ranks rapidly, he worked many 16-18 hour days due to his training and level head.

His daughter spent time with her father but most was spent with her mother at home. In August 1991 my friends ex-wife gave birth to a boy. Both were very happy. however, problems soon arose. Their daughter who had developed a stuttering problem early

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~~problems early~~ ~~IN~~ 1991; this became so bad that the child was unable to say two words with out stuttering. This was assumed to be a typical developmental problem that she should out grow.

The main issue was his daughter's behavior problem. It was reported to him by his ex-wife, that his daughter would: 'Get up in the night and wander off, play with kitchen knives, break glass hide it, and most disturbing of all she had allegedly attempted suicide and spoke of going to heaven. My friend never saw any of this behavior but, took his ex-wife at her word and made arrangements for a visit with a counselor. After the visit with the counselor she was unable to draw any positive conclusions but, recommended "intensive therapy" 3-4 times a week. Which was more than acceptable to my friend. ~~Of course~~

At this time their daughter was yelling and screaming at both her mom and dad saying " she hated both of them and did not want to go with them". This shocked them both. As they all left the counselors office their daughter tried to jump out of the moving car. This was the first time my friend saw any suicidal intentions by his daughter. Immediately they returned to advise the counselor of the incident. The counselor admitted the child to the county PSYC WARD.

Two days later my friend was called to the CRIMES AGAINST CHILDREN DIVISION OF THE SHERIFFS DEPT. on suspicion of sexually abusing his daughter. When he asked the detective how and where he got this information. He told my friend that his daughter had told the detective and counselors that her had molested her.

The detective told my friend that 4 year olds dont lie so he knows she is telling the truth. My friend spent 3 hours trying to convince the detective that he didn't do this horrid act and

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advised him of the previous suspicions he had of the grandfather as well as other possible scenario's including coaching. This proved to be a futile attempt as his daughter was immediately removed from his custody and placed in a less than acceptable foster home. Here his daughter was told that daddy was bad and daddy did bad things to her and himself and to mommy. To make matters worse my friends daughter was not examined for abuse for almost a month after placement. My friend had to schedule supervised visits with his daughter and son at the DEPARTMENT of PUBLIC SOCIAL SERVICES/ CHILD PROTECTIVE SERVICES office for a hour a week. He further had to move out of his apartment and live in a hotel as he was under a restraining order by his ex-wife. Approximately twice a month my friend was in court but, court was always continued as " new evidence" kept surfacing, such as my friend was a cross dresser ,used drugs,tied his children up, cut parts of his children's bodies off, and the list goes on and on. This subjected my friend to random drug test which was no problem for him as his illegal drug use was a complete joke ; He is however , a insulin dependent diabetic he takes medication for that, he gets headaches and takes some aspirin, occasionally he gets an allergy attack which he takes a pill for and, last he smokes cigarettes. This drug use^{was} not investigated or sustained or even inquired about ,nor were any of the other ludicrous allegations investigated, he was presumed guilty.

My friend was forced to put^{his} pursuit of being a cop on hold, until this ordeal was over and he was cleared . My friend then took some very poor legal advice and took his all

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of abuse and neglect but did not know the perpetrator. With the guarantee of his attorney that in 6 months he would have his kids back. Now his son was removed and placed in a separate foster home because his ex-wife was suspected of physically abusing their son.

The DEPARTMENT of PUBLIC SOCIAL SERVICES/ CHILD PROTECTIVE SERVICES reunification plan required both parties to attend sexual abuse group therapy, parenting classes, and private counseling to address sexual abuse issues as well as participate in co-counseling, with his daughter. My friend ^{COMPLETED} ~~complied~~ all of the above requirements except co-counseling with his daughter because his daughters counselor would not allow this to happen.

My friends ex-wife didn't attempt to complete anything. My friend during this time had to deal with four different social workers two of which presumed him guilty with out investigation. Two foster homes for his son one of which purposely sabotaged visits by scheduling doctor appointments, picture appointments ect. during visits. One foster home for his daughter in which the foster parent manipulated his daughter to what they wanted and to quote the social worker " is using her for her (the foster mother) own selfish needs". This was accomplished by ^A coaching his daughter to say anything damning about her dad, sending spies to monitor private visits between social worker and child , giving birthday and christmas gifts from dad to the less fortunate, dreaming up negative behaviors from his daughter after visits with father (I say dreaming because none of the social workers witnessed any unusual behavior from his daughter even hours after the visits with dad

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of visits with her father , because they were detrimental to her well being.

My friend had to drive to another town to visit his son once a week. He had to drive approximately 85-90 miles to court one way. He had to drive 95 miles one way to see a counselor. 40 miles to group therapy and still hold a full time job and sleep. All these trips were of course on different days and times ^{AND} repeated over again each and every week.

My friend went ~~so~~ so far as to subject him self to a polygraph test at his own expense, to prove beyond a doubt he was innocent. The results " no signs of deception".

The initial intake interview in the hospital PSYC WARD was video taped however , when the counselor wanted a yes answer he/she would nod there head. When a no answer was required they would shake their head. None of the subsequent interviews were taped . All "new evidence" was gained from a 4 year old at the foster home with foster parent present or some neutral spot with foster parent present. It doesn't seem to me to be fair to a child or parent to conduct a so called investigation this way.

Sexual abuse of a child or any living person is a very serious crime and should be severely dealt with. However, sexual abuse has turned into a modern day witch hunt, which is wrong why do we punish parents and children that don't deserve this? Why take such a drastic measure such as removal of ones children on unsubstantiated allegations ? I feel that the social workers of child protective agencies nation wide have a huge and stressful responsibility as they can make or break a family

... of an eye. I don't want to talk poorly about

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the numerous workers or agencies in fact I want to compliment and commend all of them for protecting those children who were truly in dangerous situations but, maybe, just maybe some became over zealous or power hungry and ^{OLD} something wrong. This is why I support Senate Bill 206 it creates a few more checks and balances to prevent a terrible mistake. I further feel that social workers; law enforcement, counselors and medical personal need to have more investigative training and abuse / neglect recognition training. These hopes and desires of mine now become your responsibility please take it upon yourselves as law makers and professionals to fill in the gaps.

Well in conclusion let me finish this story. After three plus years of fighting for his children my friend in the social workers eyes didn't do enough therefore , her recommendation was this : My friends daughter is now 7 soon to be 8 will remain in the same foster home until she is a legal adult (18 yrs). No visits or contact from her father . Even though this is not a good spot for his daughter. The social worker states " THE GOOD OUT WEIGHS THE BAD. SHE'S BONDED TO THE FAMILY".

My friends son, now 3½ years old is an adoptable child. Even though none of the allegations were found to be true; in the eyes of the court. "If he were returned to his father he would be at risk " Therefore on January 23rd 1995 my friends parental rights were terminated. This taking any contact what so ever away from father and son.

My friend, well, that's me I lived this nightmare!!! I moved back to Montana with my new fiance' who has been my strength through almost all of this whole ordeal. I have had severe

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lost 30% of my kidneys due to the stress and, several run-ins with severe depressions. Now we'll try to start over, my fiancée Ida and I.

The mother went to only 5 or 6 of the court dates. Left the state moved in with a boyfriend left him, moved back home with her mom and dad, moved back to California for about 1 month, fell in love got married moved to Texas, got divorced, moved back in with mom and dad's to go with her new boyfriend who drives trucks across country. It is unknown if she has attempted to contact the children in the last year.

This all happened in the state of CALIFORNIA how ever it can happen anywhere

THANK YOU FOR THIS OPPORTUNITY AND YOUR TIME!

MR Chairmen / Members of the
Committee

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 2-6-95

EXHIBIT NO. 55 206

On Dec 2 1992 I spent the day sledding and building snowmen with my five year old daughter Ashley Christine after a good dinner and a hot bath we spent the evening reading her favorite book "Bunny Numbers" and I kissed her good night and watched over her as we fell asleep.

The next day Dept of Family Services took my daughter away in a police car and the reason was they said she was in danger of being neglected abused or in danger.

For the next 19 months my daughter and I were put through everything from physical, individual counseling, family counseling, parenting classes, numerous meetings to aid. & after two days my case worker Michele Robyn

knew nothing about.

el was accused without
proof of all kinds of things
including not loving my child.
Ms. Sobayna of Roundup, UT
DFS, turned into not the
helpful person she ^{was} ~~made~~ out to
~~be~~ but ^{an} self serving
holier than thou self appointed
judge & jury.

el was given 1 hour a
week supervised visit, this
included not letting us swim
because she couldn't monitor
our conversation's do not
letting me ~~to~~ take her to
bathroom unsupervised.

Even after getting sparkling
reports from psychologists &
counselors my child remained
out of the home full time
after 1 year she (a six year old)
was packed up & moved before
my home & my ex-husband & every
they would never ~~be~~ ^{2 weeks}

EXHIBIT

6

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ask a adult do do this
But in Rdup my child
didn't have a choice.

Only after 19 months
and a cost do me of more
the \$10,000 Dollars and lost
time with my child, a judge
decided that their ~~it~~ was
~~never~~ a reason she ~~was~~ should
have been taken from me.

But it's too late, After
having a child taken a
brand is put on you as
a Bad mom.

My daughter will never
understand why.

when they took my
child they took her trust
and from me they took my
confidence, my self worth
when they took Ashley they
took my life!!

But my love was
never shaken.

I have her back now
and we are a family again
but when D.F.S. walked out
just as abruptly as they
walked in. They left me
to rebuild what ~~was~~ they had
taken ~~back~~ away.

There's one hope I have
Please Please before you
take a child from its mother
think twice, ask questions,
give us a chance before
you change our lives forever.

Thank You for
Supporting Bill 206
Penny Bernhardt
401 W Central Apt A
Belgrade MT
59714

1-406-388-7195

EXHIBIT NO. 7
DATE 2-6-95
CASE NO. SB 206

RON AND JOAN AUSTAD
100 RIVERVIEW C
GREAT FALLS, MT 59404
452-5804 work
761-4192 home

TO OUR FRIENDS AND FAMILY:

WE ARE WRITING TO ASK FOR YOUR SUPPORT ON NOV. 28TH. AT 9:00 AM IN JUDGE LARSON'S COURT (CASCADE COUNTY COURT HOUSE IN GREAT FALLS).

THIS IS A BRIEF BACKGROUND OF WHAT HAS TRANSPIRED:

IN APRIL OF 1992, TERRY MURRAY, (INVESTIGATOR FOR DEPARTMENT OF FAMILY SERVICES) CALLED OUR SON, KEN BAILEY, AND SAID HE NEEDED TO BRING HIS TWO CHILDREN, BRITTNEY, 2 1/2 YEARS OLD, AND JACOB, 4 1/2 MONTHS OLD, UP TO HER OFFICE. TERRY MURRAY FELT THAT BECKY, 4 YEARS OLD, AND NOT KEN'S NATURAL CHILD HAD BEEN MOLESTED. SHE STATED THAT BECKY HAD NAME KEN AS THE PERPETRATOR. ALSO, AT THAT TIME THEY TOOK GINGER'S, (KEN'S WIFE) CHILDREN CARRIE AND ANDY. KEN OFFERED TO LEAVE THE HOME SO CARRIE AND ANDY COULD REMAIN WITH THEIR MOTHER, BUT TERRY MURRAY SAID SHE WAS CO-DEPENDENT, SO THEY REMOVED THEM AND PLACE THEM WITH HER PARENTS. KEN'S CHILDREN WERE PLACED IN A FOSTER HOME ALONG WITH BECKY.

KEN WAS FIRST ORDERED TO TAKE A SEXUAL EVALUATION WHICH INCLUDED BOTH A WRITTEN AND ORAL EVALUATION, POLYGRAPH AND PLETHYSMOGRAPH. THERE HAS SINCE BEEN SEVERAL OTHER COURT ORDERS ASKING FOR PARENTING CLASSES, ANGER MANAGEMENT CLASSES, AND A SUBSTANCE ABUSE EVALUATION. ALL OF THESE TESTS AND CLASSES HE HAS COMPLETED AND PASSED.

IT HAS BEEN TWO YEARS SINCE KEN HAS SEEN HIS DAUGHTER, AND HAS NOT SEEN HIS SON SINCE JANUARY OF 1994.

KEN WAS SERVED WITH PAPERS TO SEVER HIS PARENTAL RIGHTS AND PUT THE CHILDREN UP FOR ADOPTION IN MAY OF 1994.

JOAN HAS REQUESTED UNSUPERVISED VISITATION WITH OUR GRANDCHILDREN ON SEVERAL OCCASIONS AND HAS BEEN DENIED BECAUSE WE BELIEVE OUR SON IS NOT A PEDOPHYLE AND THEY DO NOT FELL SHE WILL PROTECT THEM.

FAMILY SERVICES TOOK OUR GRANDCHILDREN ON THE PRESUMPTION THAT OUR SON HAD MOLESTED THEM. HE HAS NEVER BEEN CHARGED, AND ALL OF HIS EVALUATIONS ORDERED BY THE COURTS HAVE CAME BACK TO IMPLY THAT NO GUILT EXISTS. YET, AFTER TWO AND A HALF YEARS WITHOUT OUR CHILDREN, THOUSANDS OF DOLLARS IN COURT ORDERED EVALUATIONS AND ATTORNEY FEES, THE FIGHT FOR OUR CHILDREN GOES ON. NOW THEY WANT OUR SONS PARENTAL RIGHTS SO THAT THE STATE CAN PUT THEM UP FOR ADOPTION.

THEY HAVE HELD OUR GRANDCHILDREN HOSTAGE FROM US, OUR SON, AND OTHER FAMILY MEMBERS WHILE WE'VE JUMPED THROUGH THEIR HOOPS AND SPENT THOUSANDS OF DOLLARS. BUT MOST OF ALL IS THE PAIN THAT THE CHILDREN HAVE HAD TO GO THROUGH BY BEING REMOVED FROM THEIR FAMILY AND HOME AND PUT WITH STRANGERS, AS WELL AS THE ANGUISH WE HAVE GONE THROUGH DOING WITHOUT OUR CHILDREN AND HAVING SOMEONE ELSE MAKING THE DECISION AS TO HOW THEY SHOULD BE RAISED, PLUS HAVING

TO LEAVE THE CHILDREN AFTER A ONE HOUR VISITS KNOWING IT WILL BE AT LEAST ANOTHER MONTH BEFORE WE CAN SEE THEM AGAIN.

I THOUGHT WE LIVED IN A FREE COUNTRY, YET, WE'VE BEEN AFRAID TO SAY OR DO ANYTHING THAT WOULD GO AGAINST FAMILY SERVICES FOR FEAR THAT IT MIGHT JEOPARDIZE THE RETURN OF OUR GRANDCHILDREN TO THEIR HOME.

HOW CAN THIS HAPPEN? WE ARE LAW ABIDING CITIZEN WHO ARE ONLY GUILTY OF LOVING OUR CHILDREN AND GRANDCHILDREN AND WE CAN'T SIT STILL ANY LONGER WHILE FAMILY SERVICES DESTROY FAMILIES IN THE NAME OF PROTECTING CHILDREN AND WE THE TAX PAYERS PAY THEM TO DO IT. WE CAN NOT UNDERSTAND THE POWER THAT FAMILY SERVICES HAS, AND WHY THEY ARE IMMUNE TO THE LAW WE MUST ABIDE BY, "OF INNOCENT UNTIL PROVEN GUILTY."

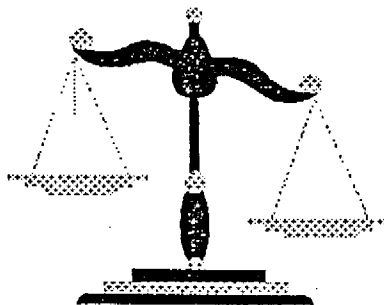
OUR FIGHT IS ALSO FOR MANY OTHER FAMILIES WHO WE DON'T KNOW, BUT WHO TOO HAVE FELT THE INJUSTICE OF OUR SYSTEM. IF YOU ARE ONE OF THESE FAMILIES OR IF YOU JUST FEEL LIKE THE SYSTEM HAS GONE AMUCK, WE NEED YOUR SUPPORT TO BALANCE THE SCALES OF JUSTICE.

WE WILL BE GOING TO COURT TO FIGHT THE DEPARTMENT OF FAMILY SERVICES FOR THE RIGHT TO HAVE OUR GRANDCHILDREN REMAIN IN OUR FAMILY. IF YOU ARE UNABLE TO ATTEND THIS COURT HEARING A LETTER STATING YOUR OPINION WOULD BE GREATLY APPRECIATED.

THANK YOU FOR YOUR SUPPORT AND YOUR PRAYERS

YOURS TRULY

RON AND JOAN AUSTAD AND FAMILY



Montana

The Last Best Place?

In their fiscal year 1992, the Montana State Department of Family Services removed over 3,300 children from their homes and placed them in state funded foster homes. With the state child population less than 180,000, this raises some very disturbing questions. Coupled with the fact that Montana, listed among the lowest states in crime and population, is ranked 2nd in the nation in reported child abuse cases. Is this a state of child abusers and molesters. Or is this a state whose children and families are pawns in political power games?

In 1992, San Antonio, Texas, 12th largest city in the nation, with a population of over 360,000, twice Montana's child population, their Department of Family Services investigated 8,302 cases of reported child abuse involving almost 13,000 children. With the 6th highest crime rate in the nation, they "constitutionally", in accordance with due process of the law, substantiated 3,524 cases of abuse, involving 5,414 children. Yet, they only removed 945. If, as the Montana State Department of Family Services claims, that they are "about average" in the percentage of children removed from the home, then, according to these "average" statistics, DFS had to have investigated 29,057 cases, involving 55,674 children, finding 12,334 cases of substantiated abuse involving 18,949 children.

	<u>Montana</u>	<u>San Antonio</u>
Total Population	@800,000	@873,000
Child Population	@189,000	@367,000
#Cases Investigated	29,057	8,302
Children involved	44,674	12,764
Cases substantiated	29,057	3,524
Children involved	18,949	5,414
Children removed	3,310	945
Removal rate	3.6%	.43%
Foster care budget	16+ million	7 million
Total budget	101 million	40 million

According to these statistics, almost 20% of families with children in the state of Montana could fall suspect through investigation by the Department of Family Services. The question again: is this a state of child abusers and molesters? Or is this a horrible example of a department out of control; a department that stands alone in its dealings, free to operate beyond the safeguards guaranteed by the Constitution of The United States? In America, could you be removed from your home and placed under confinement for an indefinite amount of time, unaware of the charges against you and powerless to seek recourse? Of course not. Unless you are dealing with the Montana State Department of Family Services. Then the freedoms and rights that this country were built upon are lost. Is Montana truly the last best place? Not if you love your family.

September 6, 1994
John and Tammy Schubert
636 Brooks St.
Missoula, MT 59801
(406) 549-7372

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2-6-95
PRA NO 58206

Marc Racicot
Governor State of Montana
Governors Office
State Capital Building
Helena, MT 59620

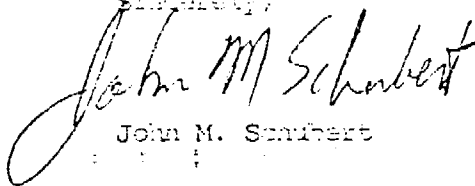
Dear Governor Racicot:

We are writing to you because we feel that our family is being harassed by actions of the Department of Family Services. In brief DFS received a referral from our sometime babysitter, who is also a Foster Care parent of kissing and toilet training problems with our children (Eric 2 yrs. and Shannon 4 yrs.) in September of 1993. Eighteen days after the referral and without any notice or attempting to make any contact with either parent the children were removed (on October 5th) from the day care center (Rainbow End) and placed into Foster Care. As part of the removal Shannon was questioned by the case worker Marsha Kurshner in her office for 15 minutes. Kurshner said in a sworn statement to the court that Shannon told her that "Daddy had poked her in the butt (rectum) with a pencil when he gives me a bath". This assertion was not made in the original referral. In fact Shannon says that Kurshner (she calls her the fat lady) told her "Daddy pokes you here doesn't he" and pointed to her vaginal area. When Shannon told her no she persisted with intimidating tactics and game playing. Whatever happened in that office it is clear that Shannon was intimidated and coerced at best or that Kurshner simply lied in order to justify her actions. In any event this coerced statement was not taken into account again. Shannon was placed in the home of the referer for Foster Care (no mention of any abuse of any kind), she was given a physical exam by a Pediatrician (no signs of any abuse past or present), she was interviewed by a Child Psychologist eight times (no mention of any abuse). The children were returned to the home on October 31st on the condition that John move out of the house. Since that time in an effort to prove that no abuse has occurred John has seen Dr. Michael Scolatti (specializes in criminal sexual behavior and set up the sex offender program for the Montana State Prison). Dr. Scolatti says in his report "John Schubert did not appear to possess many of the traits I have observed in admitted or convicted sexual offenders". In addition John underwent a computerized polygraph exam relating to sexual abuse. The results were over 99% truthful indicating no sexual abuse had occurred. The entire family has undergone a family evaluation with Dr. Philip Bornstein. Dr. Bornstein concluded in essence that while he could observe no problems with Shannon she should undergo continued evaluative therapy for one year or longer until we can understand why Shannon may have made the alleged statement to Kurshner. This recommendation is abhorrent to us, that Shannon or any member of our family undergo never ending treatment until DFS gets the desired results. In the past year we have done every thing we could to prove that no abuse occurred ever. Every good report we give to DFS they claim is inclusive. It is hard to prove something that never happened didn't occur. This is like the Spanish Inquisition, they knew you were a heretic or demon the only question was which form of torture would make you confess.

In summary, the Department of Family Services has kept John out of the home (which is also my business location) since November of 1992, forced us to spend all of our savings and go into massive debt to pay for lawyers and doctors, put severe stress on the children all because of a claim that hasn't been substantiated. The harassment began when they broke their own guidelines as contained in the DFS Child and Family Services Policy Manual (March 1994) by keeping this case open for a year without substantiation. The manual states on page 201-6 10f4 "Notice of substantiation of abuse or neglect will be sent". This notice was never sent because abuse was not substantiated (in fact the current case worker Jackie Kurts admits this). During a July phone conversation Tammy had with the Director of Family Services he stated that "if a case of abuse has not been substantiated the case should be closed". Our problem is that the case worker and her immediate supervisor want to keep this case open with no end in sight. We can only conclude that we are not alone, and that these abusive practices extend to other families as well. Four changes are needed: 1. Interviews with children need to be videotaped for future reference. It would be difficult to coerce children if you later had to justify your actions. 2. Emergency removal is being abused (we were available any time prior to the sneak abduction). This action should be a last resort after careful investigation (no investigation was done prior to removal in our case). 3. Workers should be willing to take a polygraph and the State should require it in cases where the workers testimony contradict either the children or parents testimony and there is no evidence to support the workers position (we believe some people in positions of power have a self interest or glee in there ability to wield and abuse such power). 4. Workers and the State should be legally liable for negligence as well as malice of intent. The current legal system makes it all but impossible to recover expenses or damages if a person is falsely accused. In some states a person may recover legal expenses from the state if the state fails to prove its' case.

We await your response, feel free to contact Tammy at the above number or John at 344-1811.

Sincerely,



John M. Schubert



Tammy Schubert

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-6-95
BILL NO. 58 206

February 2, 1995

State Capital
Capital Station - Box 14
Attn: Senator Jim Burnett
Helena, MT 59620

Dear Senator Burnett:

Pursuant to our telephone call of February 1, 1995, enclosed are articles my finance' and I wrote to the Roundup Record Tribune as well as other articles which have appeared regarding the Department of Family Services. Following is the scenario which happened to me, my daughter and my finance'. We believe it is about time DFS was made to stand accountable for their actions and support your Senate Bill 206. If we can be of any further help please feel free to call us at (406) 323-1451.

A verbal exchange occurred on May 8th between Kara, my daughter, and myself. My fiance', Karen Kowalczyk, was also present. We had gone out for "Mother's Day Dinner" around 3:00 p.m. After dinner and returning home, I told Kara we were going to finish fencing the dog kennel. Karen and I had already started the kennel, setting the posts in concrete and stringing part of the cyclone fence for the dogs. I told Kara that beings it was for her dog, as well as Karen's, that she could help and with three of us working on it, it wouldn't take very long to complete it. Kara then proceeded to pout all the way home making for a very tense and uncomfortable atmosphere. Upon arriving at home, Kara and I exchanged words because she didn't want to help with the fence. Kara went to her room, slamming the door. We went in to change clothes. Before we got changed, Kara tore out of the house, got in my pickup and was gone. We had no idea where she was headed, but figured she was headed out to Curtis Goffena's, her boyfriend, because that is where she wanted to go. Karen and I went out to work on the dog kennel. Later that day, around 5:30, we got a telephone call from Vicki Fawcett, of Department of Family Services, saying Kara was up at the Sheriff's Office and had filed a complaint against me alleging child abuse. We have yet to see a copy of the complaint. There was absolutely no abuse involved in this whole exchange. I also asked that Kara be returned home so we could sit down and discuss the whole situation and that was denied by Vicki Fawcett.

Because Kara is a minor (16), Department of Family Services was called. DFS called me and indicated that Kara could come back home after a 48 hour "cooling off" period. However, after 48 hours I was told to come up and sign papers to place Kara in foster care. I questioned why she was not being returned home after the 48 hours and was told "because we feel it is a threatening situation." No investigation was ever done. To our knowledge, the Department of Family Services did not appear in District Court within 48 hours to show cause why the child had to be removed from the family home. No investigation was ever done in our home to find out if the child was telling the truth. I went up to DFS and talked to Michelle Sobonya and she explained to me that it was in Kara's best interest to be placed in a foster home.

When I questioned the choice of foster home, I was told Kara had requested she be placed with Betty Goffena and that is where DFS was placing her. I questioned the placement of Kara at Betty Goffena's because Betty Goffena was not a licensed foster care home and that Curtis Goffena, Kara's boyfriend, has a mobile home and lives on the same property approximately 50 yards from Betty's back door. I felt this was not a safe or healthy situation that Kara had expressed wanting to live with Curtis, however DFS did not see anything wrong with this as this is where Kara wanted to be. I then told DFS I was holding them totally responsible for my daughter.

I did not admit to any of Kara's allegations of abuse. I admitted to having an argument with Kara regarding the building of the dog kennel and that we had exchanged words in this regard. But not once was there any abuse - just an exchange between myself and my daughter.

I am self employed and have my own construction building business. I was scheduled to be out of town most of the summer. I did come home, however, on weekends to see my family and take care of business. I had told DFS what my situation was and asked that they keep Karen apprised of the situation as I would be talking to her in the evening. DFS

agreed at that time to this arrangement. Karen contacted DFS on several occasions to find out if an appointment could be made so I could call in or if I could reach a counselor after hours as I was up in the mountains, away from a telephone from 7:00 a.m. until 6:00 - 6:30 p.m. every day. I was informed of the office hours and that I would have to call in at that time. Karen explained to DFS that this was impossible, that I was concerned about Kara and wanted to find out how she was doing, but again was INFORMED that these were the hours and I could call collect during that time. Karen told them the collect call part wasn't the problem - the hours were because I was at least a 1/2 hours drive away from a telephone and could not leave my partner on the job by himself because of the risk factor of an accident. DFS was not willing to make any concessions so I could talk to them.

Within 20 days after Kara was removed from home, I have no knowledge of DFS returning to District Court to show cause why the separation must continue.

Only one mediation meeting was ever set up for me and my daughter. Present at that meeting were Michelle Sobonya, social worker for DFS, Curtis, Kara's boyfriend, Kara and myself. This meeting was supposed to be between only myself, Kara and Michelle so we could work on getting Kara back in the family home. Having Kurt there made the meeting very uncomfortable. Some 10 to 15 minutes into the meeting Michelle Sobonya was called away on an "emergency". Kara, Curtis and I were left to finish the meeting on our own. If I was such a threat to my daughter, why was it okay to leave us alone in an unsupervised situation? No attempt was made to set up further meetings between my daughter and I.

Michelle signed an agreement, on behalf of DFS saying that we would be informed of any medical or dental attention Kara needed and it was "by chance" that we found out she had her wisdom teeth out. We were never even informed of that fact that she needed this work done. Kara was at her Grandfather's house and Karen happened to stop in to talk to my sister who was visiting from Minneapolis. Kara had gone to change some gauze in her mouth. Karen asked Kara what was wrong and Kara told her about her oral surgery. We were never contacted by DFS about the dental work Kara had done. She also later found out that Kara had a mole removed and there were some telltale signs of possible cancer so she had to go back for more tests. We were never told about this either. We found out about it through one of Kara's teachers in whom she had confided.

In July, Kara was allowed to take a trip out of state with the approval of DFS. We were never told about the trip and found out about it only after someone asked if Kara had gotten back from Idaho. Again DFS had signed an agreement stating we would be kept informed of what was going on and yet she went to Idaho without our knowledge.

I had also asked for periodic progress reports on meetings Kara was having with Donna Johnson, a counselor, over in Billings. This was never done. I were told she was going, but was never told of the outcome or when we might be able to meet as a family unit so as to resolve any issues that may be present.

In August I was served with a "Petition for Temporary Investigative Authority and Protective Services". This is the first document through this whole ordeal I had ever seen regarding the charges which were being held against me. Due to the lack of communication on behalf of DFS, I refused to sign the documents and hired an attorney, Randy Spaulding.

I decided to try and settle this without the help of DFS. Vicki Knudsen, Musselshell/Golden Valley County Attorney, Floyd Brower, Guardian at Litem for Kara, our attorney Randy Spaulding, myself and my fiance' Karen Kowalczyk, met and reviewed a document drafted by Floyd Brower to keep Kara at the Goffena Ranch. I again questioned the fact of Kara living with her boyfriend with Floyd Brower admitting that Kara and Curtis were in fact sleeping together. Kara being 16 years old and her boyfriend being 21. Floyd Brower and Vicki Knudsen didn't seem concerned even though I was objecting to my daughter being out there. I signed the document as I was threatened to be taken to court and it was in Kara's best interest that I signed it.

Things seemed to go along fine until Kara and her boyfriend Curtis Goffena split up. On October 28th, Kara asked Bette Goffena if she could spend that Friday night in town with one of her friends. To this Bette agreed. Evidently, Bette didn't give Kara a specific time to return home and began to worry about her. On Saturday, October 29th, Bette sent Kurt, now the ex-boyfriend, in to town to find Kara. Evidently Kurt said some nasty things to Kara and an argument ensued. The local police were called and things were broke up. Later Vicki Knudsen picked Kara up and took her to the jail. Kara was taken into custody and Kurt was allowed to leave. According to Kara and in front of Kara's friends, Vicki swore at her and told her how inconvenient it was to be called as she was in the middle of fixing a hole in her daughter's waterbed and because she had to take Kara to Billings, she would miss her daughter's ball game and took Kara to the jail where

December 5th - Called Jim Moe regarding status of case. He was on another call but would be given the message.

December 6th - Talked with Jim Moe. He indicated no major thing was done wrong. He felt the case had been handled properly, however it should have been handled as a "Child in Need of Supervision" vs. "Child in Need of Care".

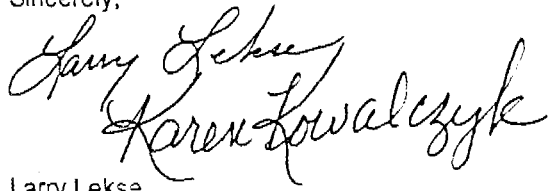
Jan. 10, 1995 - Wrote a lengthy letter to the editor. It was published on January 11th. Consensus of people in town was case was handled very improperly and have heard numerous other horror stories along the same lines. (See attached copy of article).

Senator, hope this helps support your bill. Wish we could be their in person to testify on your behalf. Even though this bill will not help us a whole lot, if we can prevent other families from living through the nightmare we have this last year, we will have accomplished something.

We also heard that DFS is asking for an additional \$8 million to finance their department. Until they are held accountable and can justify the \$8 million right up front, we vote that their request be denied.

Thank you very much for keeping us informed. Please put us on your mailing list so we can keep abreast of what is going on with DFS. We are on your side.

Sincerely,

Handwritten signatures of Larry Lekse and Karen Kowalczyk. The signature of Larry Lekse is written in cursive and is positioned above the signature of Karen Kowalczyk, which is also in cursive and appears to be written over or next to the first signature.

Larry Lekse
Karen Kowalczyk
P. O. Box 373
Roundup, MT 59072
1-406-323-1451

OPINION & LETTERS PAGE

to the family home and were told it was a "threatening" environment. The home environment was NEVER investigated, therefore, how could it be determined it was a "threatening" environment?

FACT: A child can request what home they wish to be placed in.

Kara had talked about moving in with her boyfriend, Curtis Goffena, a couple of weeks before this incident took place. Being only 16, we told her we were very much against it. However, she requested to be placed in Betty Goffena's home and was granted her request by DFS. DFS was not at all concerned about the fact Curtis lived in a mobile home on the same property as Betty. Even after we expressed our concerns about the situation and told them of the conversation we had relative to her moving in with Curtis, they still let her remain there. We were assured, that as long as the two of them were at Betty's house, nothing was going on. However, we were also told that she spent "many late nights" with her boyfriend. We were recently told that if DFS had checked the situation out, 80% of Kara's stuff was at Curtis' not Betty's.

FACT: Even though DFS claims to be a mediator between family members, nothing will be done to reunite the family.

We were told that DFS would set up meetings between us and Kara so we could once again be a family. In the three months DFS was involved, there was only one meeting set up. The meeting which should have been between immediate family members, as well as Michelle Subonya from DFS, also included Curtis. About 10-15 minutes into the meeting, Michelle Subonya was called away on "an emergency" and my daughter and I were left there to mediate on our own. Even though I requested additional meetings they were not set up.

FACT: If you are working in an out of the way place and are unable to easily get to a telephone, DFS will not make concessions as to office hours.

I was building a cabin in the mountains and was approximately 30-45 minutes one way from a telephone. We tried to get DFS to set up an evening and time I could call in and get periodic updates on the status of being reunited with my daughter, only to be told that the office hours were 8:00 a.m. to 5:00 p.m. and I would have to get to a telephone at that time.

FACT: Even though you request a specific person as a contact person, DFS WILL NOT honor your request.

Because I was working in the mountains and away from a telephone, I asked DFS to keep my fiancée, Karen Kowalczyk, informed of Kara's progress and any needs she may have. DFS was always requesting things of Karen, i.e. letting Kara come get her personal belongings, stereo, etc. but would not tell her what was going on with the case. It was not until we refused to sign further papers to continue the foster care and started asking questions as the lack of communication on their part, were we told there was a "special form" which needed to be signed in order for DFS to give her this information because she was not a "legal family member."

FACT: Once your child(ren) are placed in foster care, DFS can request as many personal belongings as they feel inclined to get.

DFS called and asked if we would bring all of Kara's personal items up to the office. To this we agreed. After transporting all her clothing, make-up, etc. we were then asked for such items as a daybed, telephone, television, horse, piano, etc. Had I not put my foot down and started saying "NO" I feel they would have almost emptied my entire home.

FACT: If your child(ren) need medical attention while in the care of DFS, you will not be told about it.

Kara had doctors appointments and her wisdom teeth pulled while she was in the care of DFS and even though they had signed an agreement stating I would be informed of any and all medical attention she was to receive I found out about everything "through the grapevine."

FACT: DFS can give your child permission to go out of state without your knowledge or approval.

Kara, with the permission of DFS, was allowed to take a trip to Boise, Idaho. I was not aware of this until a family member mentioned she had gone. I would have approved it anyway as she went to visit her mother, but shouldn't I have been consulted first or at least been told she was going, after all that was the agreement with DFS?

FACT: The County Attorney, Vicki Knudsen and Youth Probation Officer, Donna Marmon, can send your child to a Youth Detention Facility and they do not have to tell you about it.

Kara was sent to the Billings Youth Service Facility on Saturday, October 29, after an altercation with Curtis. We were NEVER called and told about this decision and found out about it after a telephone call from a family member. When we asked Kara why she didn't call us, she indicated they told her she couldn't call. However, she could call her Grandfather or another family member and tell them. Normally a child being sent to a Youth Services Facility has to be charged with some sort of violation. However, to date, we have never been told exactly what that violation was. Curtis Goffena was never reprimanded even though, according to witnesses, he started the whole altercation. Upon the County Attorney, Vicki Knudsen, being called, Kara, in front of witnesses, was sworn at and told how inconvenient it was for Mrs. Knudson to come down because her daughter had a hole in her waterbed which needed fixing and she was also going to miss her daughter's ball game. When a person files for a county job and the county is paying their wages, since when did a person have to consider what family problems were going on and whether or not is convenient for them to do their job? Besides, it was not Kara's choice to have Vicki Knudsen called, someone else made that decision for her, so why was Vicki taking this out on her? Is there a personality conflict here, or should this person even have been representing the county?

FACT: The County Attorney and Youth Probation Office can "dictate" who your child can see and talk to once they are placed at a Youth Correction Facility.

I was told the only people who could call Kara were her Grandfather and his wife, myself, and her Mother. Even though Kara and Karen got along really well, Karen was denied any and all contact with Kara at the facility even though Kara requested

otherwise. I requested a four hour outing with Kara to go shopping and out for dinner as it was Karen's birthday and Kara needed some clothes and personal items. I was told I needed to make arrangements 24 hours in advance, so on Wednesday, November 2, I called Donna Marmon to see if she would make the arrangements. I was told she would consult with Floyd Brower, the guardian ad litem for Kara, and get back to me. I had not heard back from Donna Marmon on Friday and was unable to reach her by phone so a message was left on her answering machine. I then called Floyd Brower. He indicated that Donna Marmon had not contacted him but as far as he was concerned, we COULD go shopping with Kara on Sunday. When Donna finally returned my telephone call, she told me I COULD NOT take my daughter out of the facility. I was not given a reason as to this decision. However, the following Sunday, a "friend" of Kara's mother (not a family member) was allowed to take her out shopping for four hours.

FACT: Even though your child(ren) is placed in a Youth Facility and you tell the County Attorney, Probation Officer and Guardian Ad Litem that you would like them back home, your child will not be given that option.

Kara was in the Youth Facility for several days without being told when she would be able to leave. In the meantime, her homework was being brought over to her so she would not get behind on her assignments. When the County Attorney and Probation Officer talked to her, the only options she was given in order to leave was to go live with her mother in Boise, Idaho, or get moved to another correction facility. The option of coming back to the family home, even though there would be 24 hour supervision, was not an option.

Probation Officer Donna Marmon, County Attorney Vicki Knudsen and Floyd Brower decided Kara was "A child in need of Supervision." After all this time, six months to be exact, these three "wise" people have come to a conclusion. Isn't it amazing!!! This is exactly what Kara rebelled against from the beginning. Kara had supervision at home and she didn't like it. She wanted more freedom and less supervision. The circle is now complete. Kara has been sent to live out of state with rules and guidelines set by the court. The three "wise" people have reached a conclusion and we, the family, have been put through undo hardship and pain.

Questions remaining unanswered by the "three wise people" are:

—Were these three "wise" people working together? If so, why weren't we able to get the same answers from all three instead of being handed the run around?

—Did telephone calls actually take place between the three "wise" people or is it a case of CYA?

—What was wrong with Kara liv-

ing in Roundup?

—Did the probation officer or county attorney have a personal conflict with Kara?

—Why weren't the parents allowed to help decide what was best for the child?

—Why didn't the county investigate the living arrangements and work schedules of both parents and make a decision based on facts, not hearsay.

—Did the county actually consider what was best for the minor child or did someone who is in a position with a little authority, let that authority go to their head and appoint themselves as the decision maker?

—Was it in the child's best interest to uproot her from a community she lived in and loved, take her away from friends and a school she looked forward to graduating from in the spring, as well as the security of a supervised home, immediate family and close friends and place her in the home of the mother who had abandoned her only 7 years earlier?

My fiancée, Karen, and I would like to thank everyone for their words of concern while we have been dealing with this. We have nothing to gain from writing this letter other than to make people aware of what is going on in our community and with our children and possibly preventing others from having to go through the same. We have lived through a lot of heartache and tense times due to the Department of Family Service, the County Probation Officer, Donna Marmon, the County Attorney, Vicki Knudsen, and Attorney, Floyd Brower. We hope that someday they will have to endure the same sort of heartache, stress and humiliation they have put us through. Maybe then they can be a little more compassionate and understanding towards their fellow citizens.

Larry Lekse

Letter to the Editor

After attending a meeting last month with the topic of what we, the community, can do for our children, we felt it was our duty to write this letter and let people know what is going on in our community in reference to our children and the way families are being treated. These are the facts, along with an explanation, as to the situation which happened in our family starting last May.

FACT: Teenagers in this community have more rights than the parents.

An exchange in May occurred between my daughter and I over responsibilities she had agreed to relating to her dog and helping with building a dog kennel. After an exchange of words, my daughter went up to the police station and filed a complaint alleging verbal abuse. Kara is a minor, therefore, the Department of Family Services (DFS) was called. DFS called my fiancée and me and informed us of the charges. We asked Kara be returned to the family home. That the discussion was just that and nothing more—no threats, verbal or physical abuse or anything—just an argument. However, the department felt a 48 hour "cooling off" period was in order—to this we agreed.

FACT: After 48 hours and NO investigation, your child(ren) can be placed in a non-foster care home.

After the "cooling off" period, we were told we had to come up and sign papers to put Kara in foster care. We asked why she wasn't being returned

she sat for approximately four hours. Kara was taken to Billings and placed in a Youth Detention Center. I was never informed about her being sent to the facility, or being held in jail, and it was not until my sister-in-law called the following day, October 30th, did we find out that she was over there. I still, to this date, do not know what charges were placed against her to warrant her time at the detention center. I was never told when she would be allowed to leave. I told my attorney, who contacted Vicki, Donna and Floyd that I wanted Kara to come back home rather than being locked up in the center. I was never told what the rules as far as telephoning and visiting with Kara while at the facility. Kara finally found out the only people who could call her were myself, my father and his new wife, and her mother. Kara indicated she needed some clothes, shoes and miscellaneous personal items. We asked her if she was permitted to leave the facility and she said yes but it had to be arranged 24 hours in advance.

On November 2nd I contacted Donna Marmon, County Probation Officer, requesting to take Kara out of the facility to get her the clothing items she needed. Donna indicated she would have to talk with Floyd Brower, Guardian at Litem for his approval. I had not heard from her by Friday, November 4, and our 24 hours was drawing to a close. I tried to reach Donna at home but only got her answering machine so left a message seeking permission. Because of the 24 hour window, I called Floyd Brower myself. Floyd said Donna Marmon had not contacted him but as far as he was concerned he didn't have a problem with my taking Kara shopping. Donna Marmon then called back and said she would not give me permission to take her out of the facility, but would not offer an explanation as to why.

On November 12th, Kara called home and talked to Karen as I was helping at a Rotary Auction. Kara indicated that "a friend of my mom's" was taking her on Sunday and she needed some money. She said Donna Marmon was coming to Billings to take Kara to the Girls Basketball Tournament and would she get hold of her and send some money over with her. Karen called Donna Marmon at home and tried to explain the situation, however was met with a very rude and belligerent "You don't have telephone privileges and I won't talk to you" from Donna Marmon. Donna then slammed the receiver down. Karen tried to call her back but she would not pick up. I left a message on her answering machine.

Kara was finally released on Tuesday, November 15th. Even though I had told my attorney, Vicki Knudsen and Donna Marmon, I wanted Kara to come back to the family home, Kara was told that was not an option for her. Her options were to either go live with the mother who abandoned her at age 11 or go to another youth detention facility. Not wanting to go to another facility, Kara agreed to go live with her mother in Boise, Idaho. Brenda Lekse, had to pick Kara up at the Youth Facility and bring her to Roundup. Donna and Vicki would not let Kara even stay in town overnight. She had to be driven back to Billings and then come back on Wednesday for a meeting with Donna. Brenda was included in the meeting with Donna Marmon, however, I was not. Kara claims that Donna wrote some additional stipulations into the Petition after everyone else had signed, however, we have been unable to get a copy of this document to find out if in fact Donna did write things in there. Kara claims Donna and Vicki told her she could not come back to Roundup to even visit with her family until Spring break and she could not come back to live in Roundup until after she reached 18. She cannot graduate with her class in the spring of 95, nor can she even attend the graduation exercises of her classmates because of this stipulation.

On October 31st, Karen called the Department of Family Services and spoke with the secretary. She requested names and telephone numbers of supervisors over DFS in Roundup and was given these. She then called Hank Hudson, the State Director at Helena and explained what I had been through. Mr. Hudson said he wouldn't get involved until "all other people had been contacted" and I should follow the chain of command. Mr. Hudson informed Karen that she should contact Jim Moe in the Lewistown office and have him investigate the matter and if all else failed to call him back.

November 1, 1994 - Karen spoke with Jim Moe's receptionist. Jim was in Harlowton but she would give him the message. She also indicated he was scheduled to come to Roundup the following week.

November 3rd - Karen spoke with Jim Moe and explained the situation with Kara. Gave Jim names and telephone numbers of people to talk to. He indicated he would like to meet with us with November 10th or 15th. He said he would investigate the matter and get back to us to set up the meeting.

November 7th - Talked to Jim Moe. He will meet with us at 3:00 on Thursday November 10th at our home. I called Randy Spaulding, my attorney to ask him to attend the meeting also. Jim took down all the information and said he would investigate the matter and get back to us.

OPINION & LETTERS PAGE

To the Taxpayers of Musselshell County:

Do you know what is going on in your community when it involves your children? Here is an incident that happened to me a couple of months ago and I feel it is time these kind of things are brought to people's attention. After all, it is our tax dollars that are paying these people's wages. Don't you think we deserve better treatment than this? I do...

On Saturday, November 12th my fiance's daughter, Kara, called our home and asked to speak with her Dad. Her Dad was helping with the Rotary Auction, so Kara and I visited for quite some time on the phone. You see, Kara was placed in the Youth Services Facility in Billings by Mrs. Donna Marmon, Youth Probation Officer, and Mrs. Vicki Knudson, County Attorney, the end of October. In our conversation, Kara mentioned that she was in need of some money and Mrs. Marmon was coming over to take her to the Girls Basketball Tournament that evening. Kara asked if I would call Mrs. Marmon and arrange to get the money to her. Not knowing whether or not Mrs. Marmon had already left for the game, I called her home to explain our situation and see if she would help. Before I could explain the whole conversation, Mrs. Marmon rudely and belligerently INFORMED me, "You DO NOT have telephone privileges and I will not talk to you." The phone was then slammed down on the receiver. I tried to call her back immediately, in hopes of obtaining her help, and all I was able to get was her answering machine.

I have two children of my own ages 18 and 21. I know their needs haven't always happened between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday. I have always been led to believe a probation officer's job was to help a family who's child was in need, whether it was 3:00 p.m. or 3:00 a.m.

After this exchange a lot of questions have crossed my mind:

- * Since when does a citizen need to be granted "telephone privileges" to talk a youth probation officer—especially since the child involved is a family member?

- * Isn't it the duty of the Youth Probation officer to work with the parents and/or step parents, as well as the child, to help the child get back on the right path in life?

- * Why was I treated so rudely? Mrs. Marmon was going to see Kara anyway. Was I asking too much when I asked to take money to her?

- * If Mrs. Marmon treats me in this manner, how is she treating children and young adults in this community?

- * What have I ever done to Mrs. Marmon to deserve treatment like this?

- * Is the Youth Probation Officer position a 5 day a week 8 to 5 position?

- * If a child gets into trouble, must it be between 8 a.m. and 5 p.m. Monday thru Friday? If so, shouldn't all the children/young adults in this county be given a set of rules to follow so they are sure not to need the Youth Probation Officer between 5:01 p.m. and 7:59 a.m. each day and, heaven help them if they get in trouble on the weekend! Guess they will just have to sit it out in jail until Monday morning because the probation officer is only available 8 - 5 Monday thru Friday.

- * Because I am engaged to Kara's Father, why couldn't I talk to or go see her while she was in the Youth Services Facility? Why was Kara able to call me, however, I couldn't call her. I never did anything but try to be a "mother" figure to her after her own mother walked out on her

when she was 11 years old.

If anyone in the community can answer any of the above questions I would love to talk to them. Obviously, I cannot go to Ms. Marmon even though they do involve her position, because "I do not have telephone privileges." Or, if someone in the community is authorized to give me these privileges so I could speak to Ms. Marmon, I would be greatly indebted to them.

Just for the record, I would not know Mrs. Marmon if I met her face to face on the street. They say a first impression is a lasting impression. If this turns out to be so, she and I could be off to a very bad start. The only things I may be guilty of are:

- * falling in love with Kara's Dad, Larry, and accepting a proposal of marriage from him;

- * making a house into a home for Larry and his family;

- * good home cooked meals and another adult for Kara to come home from school to ask for guidance to everyday problems and situations;

- * offering Kara and her brother Jason the same kind of love, affection and respect I have given my own two children; and

- * making plans with my future "step-daughter" to take riding lessons from her in exchange for my teaching her how to cook, sew and use a computer.

Karen Kowalczyk

Letter to the editor:

Please parents, take notice!! Be-ware of D.F.S.!!! It has been our experience that no matter what the families go through, the children are hurt the worst.

Think of yourself as a small child, not in school yet, his only exposure to the outside world has been through his parents. Some strange woman and police officers (who children are to go to for help) come into your safe and secure life. They take you away without mommy and daddy. Mommy and Daddy are crying and are upset. You are taken to a place you have never been before, left with people you don't know. Everything you know and love are far away. You don't know why you can't be with mommy and daddy. You don't know why you can't go home. If you are lucky you might get to see mommy and daddy for a few minutes. Just to see them leave crying without you!! You wonder if you did something and mommy and daddy don't want you anymore.

When you get back home (if you get back) then you never trust anyone (police officers or not). You are terrified that mommy and daddy will disappear again. It will affect your entire life.

Isn't it about time we think of these children as part of a family.

It has been my opinion on what I have seen and heard, D.F.S. was named wrong. Department of Family Services are no longer for the families, they are for job security. They have no care of the damage they do to children or the family unit. All they care for is how to keep their jobs and how to get more funding from the government.

If you care about children, it is time to speak up and stand up to D.F.S. We need this to stop.

Here is a phone number to call for your opinions, personal experiences and as concerned citizens: 1-800-222-4446. Call now!!!

Parents for Happy and Healthy Children,
Larry Anderson
Lisa Melton

Letter to the editor:

A mother's cry for help!!

I never once in my wildest dreams, ever thought the joy and the miracle of giving birth, becoming a mother, could or would ever come to this, a nightmare.

For five years, we have been fighting D.F.S.—our crime is not being rich.

Last Thursday, January 5th, around 2:30 p.m., D.F.S. came to our door. They took our two youngest children ages 4 years and 18 months. They informed us that our other children; 13, 11, 10, 6, and 5 years had already been picked up and placed. The reason was they had two more calls; it was the last straw for D.F.S.

We have met with D.F.S. and others, trying to get our children home. We were informed that if we had our own home, we would probably (not promised), get our children back. We were told 75 % of our problem was not having a home.

My husband, Bill Anderson, has always worked hard for our family. He has always helped anyone who needed help, if he could, sometimes even when he couldn't.

Some history on my husband: (1) Has worked since 15 years old full time—ranch work, five years in the oil field, tearing up railroad track here in Roundup, three years at Foster ranch and feedlot. He hurt his back which cost him his job at Foster's. He settled and bought his family a home, which was lost due to circumstances out of his control. (2) No doctor has yet found what is wrong with his back—quit smoking, lose weight and learn to live with the pain. (3) Health problems are still there, still untreated and doctors ask if he could work would he—is he really hurt or is he trying to get someone else to pay the bills? (4) His problems have worsened. (5) Bill started a fire-wood business and became self-employed. He loves his work, he can take time off when he can't work, he would take the family with him to make family time when time was hard to come by. (6) He never took
A F.D. would be had on other choice...

There is a trumpeter and a trom-
bonist who are looking for some more
brass instrument players to do a little
Tijuana Brass music. Calypso music

Elvis, the Beatles, and others of that
era.

EXHIBIT

DATE

2-6-95

31

SB 206

without so his family could have.

Now he watched his children to-day cry, brokenhearted, asking him to take them home.

Our children now are split up in five different homes. One is in a youth home in Billings.

All because we need a five bed-room home. We need a (low cost) house to rent or buy with low cost. We need to be able to do this in less than three months. We are not financially able to do this, especially this quick.

We have eight children in all. Between probation and D.F.S., Helena has had our 12 year old for three years.

Please if anyone can help my husband to accomplish this let us know. Why does money mean more than love?? FOR OUR CHILDREN, PLEASE!!!

Kim Anderson
119 Quail Drive
Roundup, MT 59072
Message phone: 323-3989

Dear Editor:

I am writing in regard to Roundup's D.F.S. system

The D.F.S. in Roundup has put me, my brothers and sisters in foster care and is the Youth Services Center for reasons unknown to us at this point. Now they are thinking about putting me and one of my brothers in Roy for foster care. I think that it is all a crock and that they should leave our family alone and pick on someone who is in danger or needs help.

The head of D.F.S. has requested that I have a chemical dependency test done on me. Not that I mind, but I'm not into drugs and she knows it. She also had put on my contract that I was very poor. This proves my

belief that she is picking on us because we have little money.

I think that we should be home with our family and hope that anyone willing to help will write to us at 119 Quail Drive, Roundup, MT 59072. My parents can be reached at phone number 323-3989.

The others are younger than me and one's a baby.

William Anderson
13 year old kid taken from family

Letter to Editor.

As I read the letter written by Mr. Lekse in the *Roundup Record* last week, I was frustrated, saddened, and shocked. How any parent could write all of this information about their own child in a public forum is beyond me. And after all the time we spent on this case, and how long I have known Mr. Lekse, I was also very disappointed.

Although I am no longer County Attorney, I do still practice law in Roundup and plan to for a long time, and therefore felt the personal attacks by Mr. Lekse had to be addressed. There is no way to respond to all of the allegations he makes under the guise of "FACT" because he and others like him conveniently attack the people he knows cannot respond or defend themselves with any detail because of the confidentiality laws. These laws were passed to protect families, and especially the Youth, but are being used by angry people so only their hearsay and personal views of the facts can be printed in places like this editorial. I can, however, address the specific details Mr. Lekse has already decided to make public through his letter.

Several "facts" were left out of Mr. Lekse's little story. One is that he was represented by an attorney, Mr. Spaulding, during this case from at least the time documents were filed in Court. Another is that the Youth was represented by an attorney, Floyd A. Brower. The third is that Mr. Lekse signed an agreement in order to avoid going to Court and consented in writing to the placement of his daughter with the Goffenas.

Mr. Lekse's detailed description of what happened on October 29, 1994, was very interesting, since he was no where to be found when problems started that day and therefore has NO IDEA what happened. The conversation that day between his daughter and I were in reference to a meeting just the day before about everyday common courtesy, keeping your word, thinking of others, and selfish behavior that could result in removal from her current placement. But I guess the story sounds better to him as written and he didn't find it necessary to talk to any officials to get more accurate information. Attempts were made to contact everyone when the placement was changed, but only the mother of the Youth could be reached. Mr. Lekse was not able to be reached, but we did contact his attorney as soon as we were able.

As far as the "great relationship" between the Youth and her father's "fiance," talk to any junior or senior at the Roundup High School and you will hear all about that relationship. It was discussed by the Youth often and clearly, and may have nothing or everything to do with the state being involved in the lives of this family.

For clarification, I will try to explain some of the mystery that seems to surround the Department of Family Services (DFS) and Youth Probation. These departments only get involved in cases where a problem already exists, and has been reported by someone. The main goal is always to reunite the family, but all members of the family must want to be reunited or it cannot be done. This is sometimes difficult when older children are involved.

Youth Services is located in Billings and is a placement facility for people who are under 18 years of age. There are two "sides" to the facility. One is referred to as "lock-up" and the other is the "open side." Those who have committed felony offenses, are determined to be dangerous, or are a flight risk are placed in lock-up, also known as detention. The open side is used for placement of those who cannot be placed elsewhere for a temporary period of time, but are not "locked up" and can walk out the unlocked doors at any time. There are consequences if they do walk, but they are not locked up. The Youth in this case was on the "open side" and the outing Mr. Lekse complains was denied to him was due to reasons I am not free to discuss because of confidentiality restrictions.

I want to thank everyone who supported me and asked me to run for County Attorney again. I tried to explain as best I could why the job was just not worth it. Everyone who read the slanted, inaccurate, and vicious letter written by Mr. Lekse in a father's CYA will hopefully understand now that it was numerous cases like this that influenced me to not run again, and why it is so very hard to get people to stay in the public services jobs he attacks. Wouldn't life be better if everyone took responsibility for their own actions instead of just blaming everyone else? And we wonder where our children learn it?!

/s/ Vicki Knudsen

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 2-6-85
BILL NO. 50206

NAME KENNETH E. HAUGEN

ADDRESS 1831 STODDARD MSLA, MT. 59802

HOME PHONE 543-6193 WORK PHONE 728-5460

REPRESENTING _____

APPEARING ON WHICH PROPOSAL? S.B. 206

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

I AM HERE TODAY TO STAND IN SUPPORT OF SB 206
A BILL TO CURB THE ABOVE THE CONSTITUTION. POWERS
OF DFS. AN AGENCY OUT OF CONTROL TO QUOTE SEN.
BURNETT. I HAVE BEEN HERE WITH A GRASS ROOTS GROUP
TIMES & TALKED ABOUT DFS TO RACICOT & THE REST
YOU ONLY TO HAVE OUR COMMENTS FALL ON DEAF EARS.
WHY IS DFS SUCH A SACRED COW? ONE SENATOR TELLS
ME YOU HATE TO TINKER WITH DFS BECAUSE OF THE
MONEY INVOLVED. TRY TELLING THAT TO THE FAMILIES
WHOSE LIVES HAVE BEEN DESTROYED BY DFS. ANOTHER
SENATOR TELLS ME DFS HAS NO ONE TO ANSWER TO BUT
ASN'T ENOUGH MONEY TO DO THEIR JOB. DFS CLAIMS THEY
ONLY SPENT 15 MIL. LAST YEAR. WE KNOW BETTER THAN THAT. THE
LAST AUDIT DISCLOSED 24.3 MIL LOST BY DFS. WHY HASN'T ANY
ONE RAISED A STINK ABOUT THIS? MR GAMBLE LOST HIS JOB
OVER THE RED LOBSTER INCIDENT. LEGISLATORS HAVE CALLED FOR
THE FIRING OF THE HEAD OF THE WATER QUALITY BUREAU FOR
NOT DOING HIS JOB. NOW THERE'S AN OUTRAGE OVER THE
HAWK RIVER ASSAULT. WILL HEADS ROLL? I DON'T SEE
UDSON'S HEAD ROLLING OVER A 13 YR OLD BOY BEING MOLE
STED BY HIS UNCLE IN WHOSE CARE DFS HAD PUT HIM. OR A
WOMEN DYING IN HER OWN FILTH IN LEWISTOWN. OR A
FAMILY RATED BY THE COUPLE DFS HAD DECIDED WERE GOOD
ENOUGH TO KEEP HER. I FIRMLY BELIEVE THE VOLUNTARY
HAND OFF COULD HAVE BEEN AVOIDED IF DFS HAD NOT TAKEN
CHILDREN IN THE MANNER IN WHICH THEY DID IT. THE
DONNA BUTLER TRAGEDY WOULD NOT HAVE HAPPENED IF DFS
HAD KEPT THE CHILDREN THEY HAD TAKEN FROM THE
FAMILY TWICE BEFORE. AS THEY WERE SUPPOSED TO DO.
THESE BILLS ARE BEING INTRODUCED NOW. I DON'T SEE
ANYTHING ETHICAL ABOUT IGNORING OUR PLEAS TO STOP DFS
FROM DESTROYING FAMILIES. IT IS AN OUTRAGE NO ONE
WILL LISTEN TO US. I CALL FOR A GRAND JURY INVESTIGATION
OF DFS.

THANK YOU,

KENNETH E. HAUGEN

NAME Michael V Billedeaux, SR
ADDRESS 1831 Sto Idard, Missoula, MT. 59802
HOME PHONE 543-6193 WORK PHONE _____
REPRESENTING Family For Families & Self
APPEARING ON WHICH PROPOSAL? S.B. 206
DO YOU: SUPPORT ✓ OPPOSE _____ AMEND _____

COMMENTS:

I am a member of the Blackfoot Nation,
A Viet Nam Veteran AND A victim of DFS.
SINCE my Dealings with DFS I HAVE
Lost my Home, my Family, AND my Children
ALL Without A trial OR proof of Allegations
IN my CASE the Allegations Started with
my 15 yr old Son, went to my wife, AND
settled on my shoulders. During the
Course of my Wifes Children Being taken
AND Allegations Being Brought Against me
One of The Accusers was tried AND
Convicted of Sexual Intercourse w/out
Consent of a 13 yr old Girl. To This Date

WITNESS STATEMENT

(over)

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

I HAVE NO VISITATION THOUGH THE ALLEGATIONS
AGAINST ME WERE NEVER PROVEN OR SENT TO TRIAL.

NONE OF MY CHILDREN OR MY STEP CHILDREN
HAVE EVER SAID ANYTHING BAD AGAINST ME.

AND YET THE ACCUSE IS NOW A PROVEN SEX
OFFENDER HAS VISITATION OF NOT ONLY HIS
CHILDREN, BUT MINE AS WELL,

THIS HAS GONE ON FOR OVER 3 YRS. AND
I AM STILL CHASTIZED FOR SOMETHING THE D.F.S.
DEEM TO BE TRUE EVEN THO ALL THE CHILDREN INVOLVED
HAVE TOLD THE D.F.S. THAT I HAD NEVER PHYSICALLY
OR MENTALLY ABUSED THEM.

TWO YRS AGO I SEPARATED FROM MY WIFE, SO
SHE COULD GET HER CHILDREN BACK. AND THAT
WAS MADE CLEAR THAT THAT WAS THE ONLY
WAY SHE WOULD GET THEM BACK.

OUR FAMILY WAS COMPLETELY DESTROYED BY D.F.S.
AND I KNOW IT CAN NEVER BE PUT BACK TOGETHER.
AND I SUPPORT S.B. 206 FOR THE FACT THAT
I DON'T WANT ANY FAMILY TO HAVE TO GO THROUGH
AND LOSE WHAT I HAVE.

DEPARTMENT OF FAMILY SERVICES

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 12

DATE 2-6-95

FILE NO. 55206 (406) 444-5900
FAX (406) 444-5956



MARC RACICOT, GOVERNOR

STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

January 25, 1995

Department of Family Services Testimony
in Opposition to SB 206

The Department of Family Services respectfully opposes SB 206. If passed this bill would make it impossible for the state to adequately protect children in danger of abuse or neglect by the same individuals who are supposed to love and protect them.

Most problematic to the agency is the requirement that criminal charges be filed against a perpetrating caregiver if the agency is going to remain involved with the family through temporary investigative authority or removal of the child from an abusive home. This contradicts the agency's mission of protecting children through supporting family and community strengths. It would be detrimental to the families DFS works with to unnecessarily force a parent into the criminal law arena when it would be possible to provide support to the family, enabling a previously abused or neglected child to return home. The criminal justice system is not based upon family support, reunification or treatment. It is based on punishment. Families involved with DFS typically need help, not punishment. It would not serve the majority of these families to remove one parent in punishment when intervention could salvage the family unit.

Another area of great concern is the requirement that reporters of suspected abuse or neglect of a child must report their suspicions under oath. Frequently concerned citizens make valid reports of serious child abuse, but are reluctant to give their names for fear of retribution or revenge. The law currently protects the identity of these reporters of child abuse, but also requires that DFS have probable cause before it can obtain a court order to continue its involvement with a family. A requirement that exposes the identity of all reporters of suspected abuse will discourage valid reports of abuse and greatly increase the risk to children in Montana.

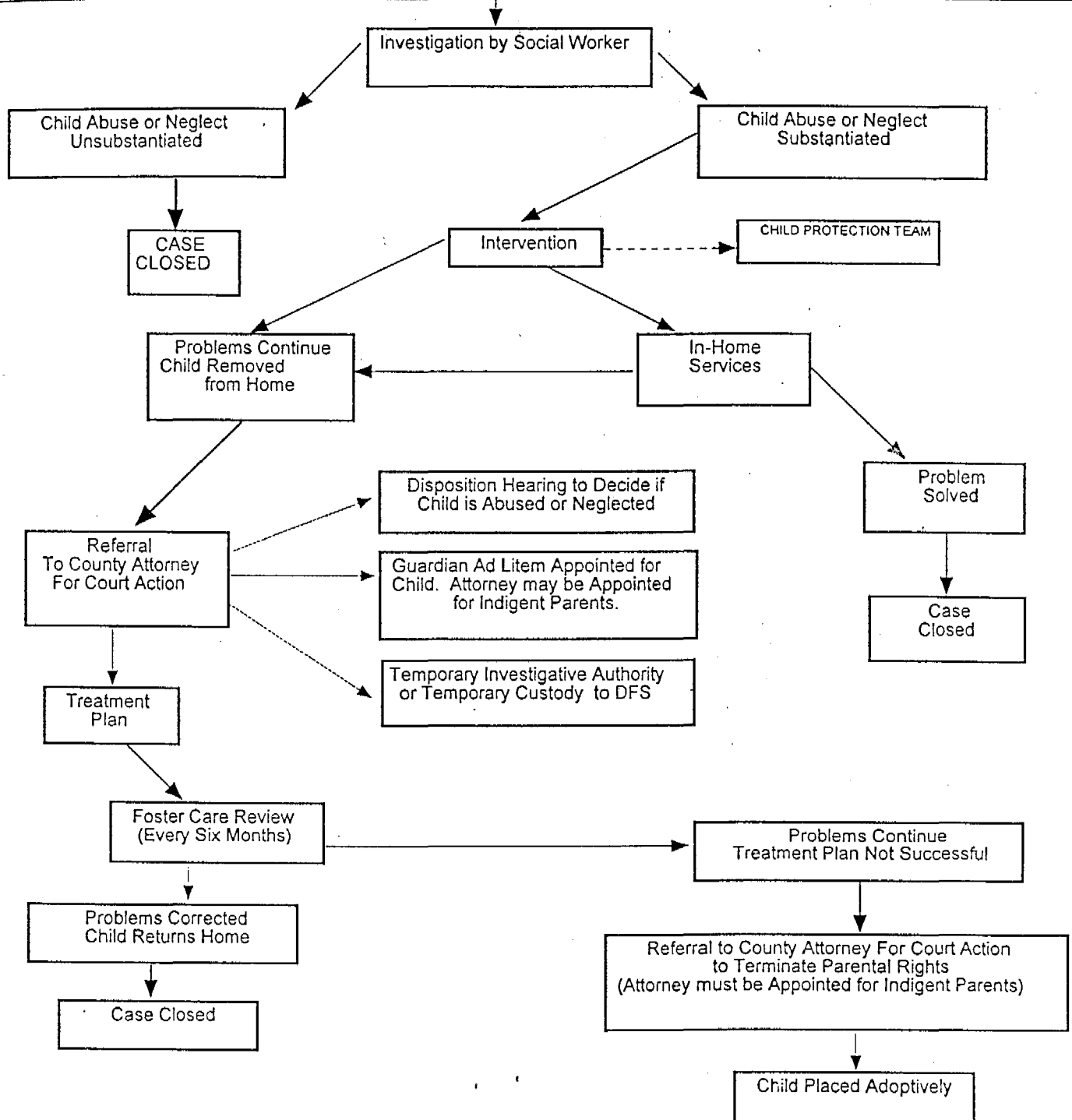
A third area of concern regarding this bill is the requirement that DFS videotape all interviews with children and be accompanied by psychologist or physician representing the family. DFS has no budget to provide each office with an adequate number of video cameras to tape each investigation conducted. Further, in emergency situations, there is no time to arrange for the family's choice of doctor or psychologist to be present. Physicians and psychologists generally have very busy schedules

and could not get away on short notice to attend an interview of a child. Further, neither families nor the agency has the funds to pay for such a service. This requirement could not realistically be complied with and, if mandated, children could be left in risky or abusive situations.

Another major problem with the bill is that families of all children in temporary foster care have access and contact with the family and foster family. There are situations when this would be very damaging and dangerous to the child and foster family. The department makes every effort to keep children who are placed in temporary foster care in contact with their parents when feasible. Contact should not be mandated, but encouraged when appropriate.

There is a flow chart attached to this testimony to visually demonstrate the process of how a child abuse referral received by the Department of Family Services is handled through agency procedures and the civil legal system.

REFERRAL OF CHILD ABUSE OR NEGLECT TO DFS



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 2-6-95

SB 206

READERS' ALLEY

Molestation is rape

Child molestation is rape.

The definition of rape in the dictionary is: "A sexual act committed by force, usually with violence." The definition of molestation: "To disturb, as to cause injury; to make indecent sexual advances to."

When a child is "molested," this child is raped. The torment, pain, violence, fear and shame a child carries after being "molested" remains all of his or her life. It affects every aspect of a child's life into teenage, adulthood and old age. How he interacts with other children, siblings, parents and other relatives, dating partners, classmates of either sex, marriage partners, children and grandchildren will be based on the way his particular case is handled — once he has the courage to expose his "molester."

If a victim sees his offender prosecuted and punished, put away where he or she cannot commit this despicable crime again, the victim has a chance to become a whole person again, to heal. When the offender is slapped on the wrist and set free, how can the victim trust the judicial system? How can he trust anyone? How can he heal?

It is time to take the shame from the victims. Help them become whole again and place the blame on the offenders where it belongs and lock them away where they belong; where they will never have access to innocent children again.

Let's take away the rights of the offenders instead of the victims.

Sharon Bakerson, a member of MACEM
(Majority Against Child Molestation)
2912 Village Road

MACEM

The real

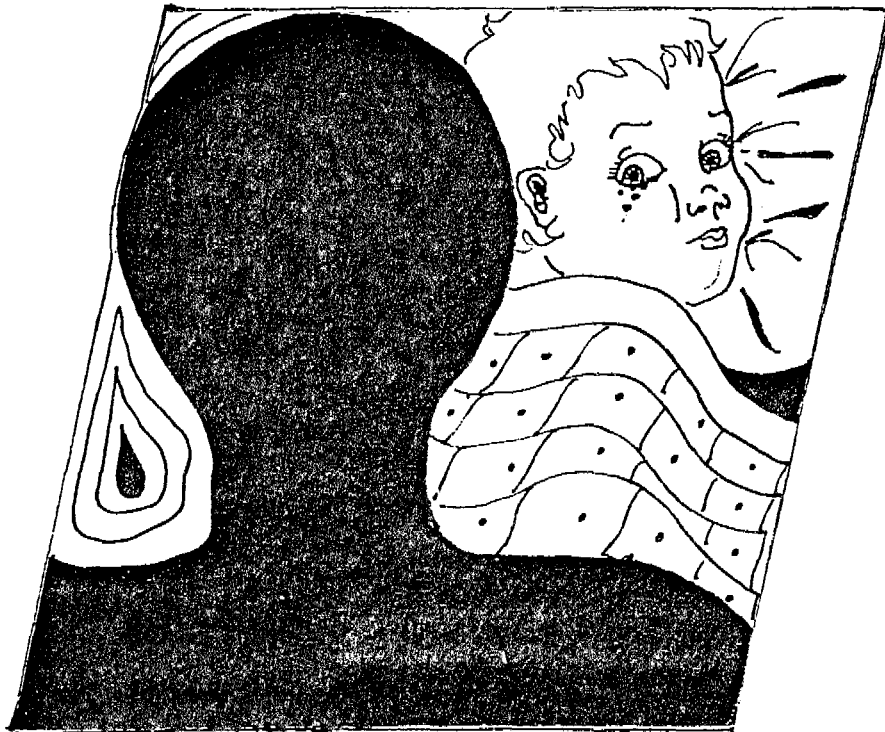
SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 2-6-95

FILE NO. SB 206

MONSTERS



aren't under the bed

MACeM

MAJORITY AGAINST CHILD MOLESTATION

MESSAGE PHONE: 227-5173

CLUES TO POSSIBLE VICTIMIZATION

Sometimes children don't tell us they are in crisis, they show us. A change in a child's behavior could be due to the stress of being abused. These changes in behavior can alert adults to their problem.

Abuse and neglect can also sometimes leave physical marks on a child's body which adults can observe. Knowing both the physical and behavioral clues to abuse can help adults intervene on behalf of children.

Keep in mind that some clues can be normal behavior for a given child at a given time. Therefore it is important to be aware of new behaviors, extreme behaviors, or combinations of the following characteristics.

Abused children can not be identified by racial, ethnic, religious or socioeconomic class. Abuse crosses these lines.

Abused Children Are Often	• fearful of interpersonal relationships or overly compliant • withdrawn or aggressive, hyperactive • constantly irritable or listless, detached • affectionless or overly affectionate (misconstrued as seduction)
Physical Symptoms	• bruises, burns, scars, welts, broken bones, continuing or unexplainable injuries • urinary infections (particularly in young children) • sexually transmitted diseases • chronic ailments, skin conditions, genital or anal soreness, bleeding, or itching
Activity and Habit Clues	• nightmares • inappropriate masturbation • a child afraid to go home or to some other location, running away • delinquency • fear of being with a particular person • lying • prostitution
Age Inappropriate Behavior	• an onset of thumb sucking • sexually active or aware • promiscuity • bed wetting • alcohol/substance abuse • older child assaulting younger children • child takes on adult responsibilities
Educational Concerns	• extreme curiosity, imagination • academic failure • sleeping in class • inability to concentrate
Emotional Indicators	• depression • phobias, fear of darkness, public restrooms, etc. • chronic ailments • self-inflicted injuries • injuring/killing animals • excessively fearful • lack of spontaneity, creativity

EXHIBIT 14
DATE 2-6-95
SB 206

February 9, 1994

My name is Sharon Brown Bakerson. L.P.N.

I am writing this statement because of my concern regarding my twenty-eight month old granddaughter, Autumn S. Haskett and her relationship with her father, Wm. (Bill) Haskett.

Autumn was eight months old when my daughter, Erinne M. Haskett left her husband and she and Autumn moved in with me. She was introverted and would respond only to her mother. If her mother left the room, the baby would cry hysterically, until her mother picked her up and held her.

The total dependency on her mother was so strong, I would sit in the bathroom holding Autumn while her mother bathed. It took approximately 3-4 months before Autumn trusted me enough to be alone with me while her mother went to doctor appointments, etc.

Judge McCarter gave sole custody of the child to her mother. Mr. Haskett was granted four hours a week visiting rights with supervision.

Because there is a restraining order on Haskett and he is not allowed near Erinne or her home, we set up a schedule for Haskett's visits.

I would transport Autumn to Haskett's mother's home and his step-sister, Dawn Wilson, would be the visit supervisor. His mother, Judy Wilson, would call me to set up the visits every week-Thursdays from 4 p.m. until 8 p.m. was agreeable to all parties. This was not a regular schedule as Haskett didn't want her every week, only when he "felt" like it. Sometimes he would want her only for an hour at a time.

Before his surgery, he wanted her pretty regularly and we complied with his wishes.

One day in November when I changed Autumn's diaper, I observed a slit on the baby's genital area between her vagina and anus. This was the day after her paternal visit.

Autumn had constant urinary tract infections and was under a doctor's care. I baby sit Autumn regularly and know her well.

On the days Autumn visited Haskett, there are highly noticeable changes in her personality and general humor. On the way to the visits, she became extremely quiet. She would not sing with me or even answer me on simple questions which she knew. She would sit with her head down, not looking out the windows, a complete 90 degree turn in personality. When she came out to the car after visits, she walked with her head down and wouldn't show interest in anything until we drove away and the complete change in her demeanor was startling, she would sing and point out the windows.

For three to four days after a visit, she was hostile and angry and acting out what is apparently frustrations.

She would kick and slap and hit my dog and cat, slam toys on the floor, scream and be physically abusive to her stuffed animals. Only her mother could hold her and handle her. On Christmas Eve, I was buckling her in preparation to an hour visit with her father. She said, not to me, but as a statement, "Be nice to Daddy and you'll get presents". When I tried to question her, for example, "Are you going to see Santa at Daddys?" She put her head down and would not respond.

Christmas was spent at the home of Autumn's aunt Donna Gregg. This is family tradition. Family get togethers are frequent. On Christmas she clung to her mother, cried, screamed at her cousins who she usually plays with and was extremely hostile all day. The whole family-14 persons- all commented on her behavior and asked if she had seen Haskett lately as it was totally out of her character for Autumn and she only acted out like that after a paternal visit.

I babysit Autumn when her mother works and I will now list my observations after these visits.

1. One day I was playing with her and tickling her ribs, knees and feet and said "Do you want to tickle my pee?" I said that knees were more fun and passed her remark over.
2. She used a toy hammer handle and pressed it, (jabbed) into the genital area of her stuffed animal saying, "it's okay if I hurt you there because I love you."
3. After visits, she won't let me wipe after going potty, saying "Don't hurt my pee Gramma, it's got an owie." Her genital area was red and inflamed.
4. It usually takes 3 days after a visit for Autumn to calm down and become an outgoing happy little girl again.

Autumn has not seen Haskett (his choice) since Christmas Eve and there is no hostility or anger apparent except a little temper tantrum once in a while which is normal for her age. If she is asked anything about Haskett she clams up and refuses to answer then seems withdrawn into herself.

It is my opinion that there is a very unhealthy relationship between Haskett and Autumn. After one hour with him the changes in the character and behavior of this child are questionable and apparent to everyone who knows her.

Respectfully submitted,

Sharon Brown Bakerson L.P.N.
2912 Village Road
Helena, Montana 59601
(406) 227-7043

1/11/94

TO WHOM IT MAY CONCERN,

My name is Nina Marie Pullman. I am the mother of 3 children, Levi, Clint and Tiana Pullman. The purpose of this letter is to inform the proper authorities about a person named William Joseph Haskett aka Bill. In my opinion, Bill should definitely not have any kind of visitation with his 2 year old daughter, Autumn. I am basing this opinion on personal experience. Bill sexually molested my daughter, Tiana, from the time she was 9 - 11. I know this actually happened because my daughter, Tiana, kept a diary during part of this time span.

I read what she wrote and believed what she told me about everything that Bill did to her. Again, I stress the fact that Bill should definitely not have any kind of contact with his own natural daughter, Autumn. He is a very sick person. My family was subjected to numerous times of abuse in all forms, including mental, physical, emotional, verbal and sexual to my daughter, Tiana.

At this point in time, Tiana is ready to press charges against Bill for sexually molesting her. I feel that she is strong enough now to successfully prosecute him and get a conviction. Hopefully, with the help of everyone involved in this situation, he will finally get what he deserves.

It is my understanding that he is in contempt of court right now for not attending alcohol treatment. I would think that would be enough to cancel his visitations with his daughter, but apparently it isn't. I would truly love to see the right thing done for the sake of a 2 year old child that needs to be protected from her own father.

It is very hard to put into words with enough emphasis that will convince the proper authorities to take whatever action is needed to prevent Bill from ever seeing his daughter again for any reason. He is a very sick, deranged, vile, uncontrollable, evil maniac. I realize those are very strong words, but they describe him exactly as he is. Lies, deceptions, cons, guilt trips, mood swings and betrayal are a few of his better qualities. Please excuse me for sounding so rude, but that is the only way I can be when it comes to Bill. He stole my daughters innocence and put the fear of man in her. No one should have to live in fear of anyone else. What kind of life is that? Not a very happy one.

Bill told my daughter, Tiana, that he would kill me if she told me or anyone else about the things he was doing to her. She was scared to death. The one person that could help her, me, couldn't because she would be dead if Tiana told her. What a terrible thing for a child to have to live with for 2 whole

Bill was responsible for that terrible thing, and I certainly do not want him to hurt his own daughter, Autumn. Not every child is fortunate to have the best of all material things, but no matter what station in life a child has, they are all entitled to their innocence and to be protected from anyone who does them any kind of harm.

As I have already stated, Bill is capable of and has caused harm to myself and my family in many different ways and more than once. If this person, Bill, is allowed to see his daughter, then there is definitely something wrong with our laws concerning the protection of our children from perverts.

I know that without some long range psycho-therapy and maybe not even then, that Bill will not get any better. He will only get worse. I am very sure that pushed enough, he would actually kill someone. I am afraid of him and so is my daughter. But not to the point of fighting back, the right way in a court of law. I sure hope justice shows up that day.

I know what Bill is capable of and none of it is good. I can see no good reason why he should ever see his daughter, Autumn, again. All he will do is hurt her more than he already has. Children aren't here for anyone who chooses to hurt them. They are here to be loved and cared for by their families. By sexually molesting or "grooming" his daughter, Autumn, Bill is not showing any kind of love or care for his daughter, Autumn. Again, I stress that in my opinion, Bill should not ever have any kind of contact with his daughter, Autumn, ever, ever again.

I know that I have not gone into any great detail about any particular events concerning Bill. Most of my memories of him are very painful and hard to talk or write about. I am just about mentally and emotionally exhausted from writing this. I am more than willing, however, to write anything else that may be needed to keep Bill away from his daughter Autumn. If you need this statement notarized or if anyone has any questions or wants me to elaborate on anything I've written here, I would be happy to do so.

I realize that Bill needs a lot of help that his family and friends can't give him, but the one that needs the most help right now, is Autumn.

I truly hope that what I have written on these pages will help accomplish what is in the best interest for all concerned.

Sincerely,

Nina M. Pullman

EXHIBIT 14
DATE 2-6-95
1 SB206

In Feb. '94 my divorce was final. We took joint custody on our two girls 3 & 7 years old. I wanted joint custody because I have always believed children should have equal time with both parents. He wanted joint custody only because he didn't want to pay any child support to me. Never the less, we agreed on joint custody; 3 days with one 4 days with the other.

From the start there were problems. Both girls cried every time that it was time to go to his house. The oldest was constantly angry and confused on where "home" was. The 3 year old would hide when it was time to go she cried and ran from me. Basically didn't want to go. But there was nothing I could do, they had to go. About 3 weeks after these visitations started, I noticed my 3 yr olds vaginal & anal area was bloody red, bleeding very irritated when she came home from his house. I thought this was because she was not wiping after going to the bathroom. I put medicine on her and never had a second thought about it.

April 24th, my daughter was in the bathroom going to the bathroom. She suddenly screamed. I ran back to the bathroom where she told me her pee-pee hurt and she couldn't go to the bathroom all the way. I told her to bend over and let me see, she bent over and not to my surprise, she was fire rent and bleeding.

A friend of mine was sitting in my living room, I yell at her to come look at Jerika. She saw exactly what I saw. Rhetta (my friend) asked her "Does anyone ever touch you down there?" Jerika got the most terrified angry look on her face and said, "no, nobody but my daddy Randy."

I left it at that. At the same period of time, the night before I caught my older daughter Shandi laying completely naked on top of her friend that was at our house. (They were separated and told I would talk to them in the morning.)

When Rhetta (the mother of my daughters friend) came the next morning, we sat both Shandi (my 7 yr old) and her child (7 yrs old) down and told them that we wanted to talk about this with them and they were not in trouble.

I asked Shandi if she knew what she was doing, what it meant. She stated, well yes, Daddy, Randy, does that to me all the time. She was then asked when does this happen and where.

She said it happens when we go to Daddy Randy's house to stay with him. She was also asked where Janice (Randy's new wife) was when this was happening. She stated that most of the time she was gone getting her back fixed at the hospital but sometime she was in the living room while they were in the bedroom. She said she saw him a couple of times because she got mad at him.

I immediately called Terry Taylor (the girls counselor) and asked her what I should do. She stated call the doctors office immediately. so I called Dr. Keefe at Childrens Clinic. She told me to bring Jerika in. I did immediately!

She didn't have time to do a complete sexual abuse exam but she took a little time to check her briefly to see if she could see anything out of the ordinary. She saw some very unusual things and told me she wanted to see both girls on Monday morning first thing. I returned Monday morning first thing.

she first started to take to Jerika, when Jerika started talking, Shandi jumped up and looked very scared and started to cry. The doctor immediately stopped talking to Jerika and started talking to Shandi and asked Shandi what she was upset and crying about. Shandi stated, Randy was going to get mad and smack her if Jerika told. she was reassured that she was safe now and she needed to tell what was happening to them.

Jerika continued with her story, then Shandi was fully interviewed. After the interviews, she did the sexual exam on Jerika where she discovered she has been penetrated both vaginally and anally. Jerika is 3 years old.

She then did the sexual exam on shandi, while doing the exam, she was talking to shandi about the places that were touched. She found that Shandi was not penetrated but there was fondling, rubbing, simulated sex with her. The doctor immediately called the Department of Family Services.

I took the girls immediately to the counselors office. She then interviewed the girls where I heard in more detail things that had happened at Randys house. I had never in my life felt the way I did that day. It felt as if my heart was being ripped out of my chest. A mothers worst nightmare.

That day, CPS informed the county attorney's office, Carolyn Clements, and made an official report. They immediately took all visitation away. During the period of the next 3-4 weeks, Carolyn Clements never contacted me once. Never returned my phone calls. One of her comments to Jeff Aldridge at CPS was she had the idea that this was just a ploy for a custody battle.

A week after that, I received a phone call from Jeff Aldridge stating he had received a call from Carolyn Clements and Randy had contacted her and requested a visit and she ok'd it.

I immediately called Hank Hudson State Directors Office at CPS and informed him of what was happening. He immediately called a supervisor at CPS and stopped the visit. The girls were video taped by DFS (CPS) both separately and different days also.

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I made a call to Mike McGrath and did not tell him who I was, but asked him. I explained the case. If this was his case would he order a visit or OK a visit, even with the psychologist recommendations, CPS recommendations very much against this. He said "absolutely not. Who would do something like this?" I then told him his deputy county attorney did that. I told him I had called the state directors office and they absolutely would not OK this.

I then also told him if something was not done, I was going to the media public about this because this was not right. Two days after that phone call, I received information that Mike McGrath had taken over my childrens case.

It is now January 1995 and this man that totally violated his own little girls has never even been charged. I have called requesting responses from Mike McGrath and I never get any answers, they keep telling me they haven't heard anything and nothing was happening with this yet. It takes time. We have all the information we could possibly need; doctors interviews, doctors sexual exams, cps interviews, CPS video tapes, psychologist interviews.

The County Attorney, Mike McGrath himself told me there was no doubt in his mind that Randy is guilty. also DFS informed me the girls are very reliable, they believe them. The counselor supports the girls story totally and has made written reports to the County Attorneys office stating they are very believable.

But yet he is still not charged. He's free on the street to do this to another child. He has complete access to his common law wifes grandchildren because they are at his house daily, also his sisters children are left there daily.

My girls were appointed an attorney, Randi Hood, in May or June. My girls don't even know who this lady is. she has never even met my girls. How can she represent my girls if she does not even know them? I don't understand this so I finally called a meeting with her on December 21st, to find out what was going on. The meeting took place and she also could not understand why he (Randy) has not been charged.

These people at the county attorneys office are supposed to be here for my children, yet they suggest to his attorney an expert witness for them to call. Whose side are these people on?

Randy Renn the criminal that goes around violating little girls, his own little girls, has more rights than these two little girls do ages 3 & 7.

How can I the mother tell these precious little girls of mine that they are safe now and they won't have to worry about going back to him and have them be hurt for telling what happened to them. If I can't even get the court system (Mike McGrath) to take action against him for violating his own little girls when all the proof they need is there.

Connie Griffin
5940 Aaron Dr.
Helena, MT
458-4754

February 8, 1994

This is my statement regarding my suspicions about my daughter's times spent with her father, Bill Haskett.

In the past, Bill had never shown any interest in Autumn (my daughter). When I filed for divorce, I made every effort for Autumn to spend time with Bill. I wanted her to know her Dad and his parents. He was given supervised custody every Thursday from 4:30 to 8:00 p.m., at our divorce hearing, which he did not bother to attend.

The supervision was ordered because of Bill's alcohol abuse and temper. His step-sister, Dawn, provided the supervision at his mother's house, where he and Dawn both lived.

Dawn has been ill for some time now and at times when she got home from work, she was extremely tired. There were times when she had to lie down. Bill did have some time alone with Autumn although I am not sure how much.

Autumn's behavior around her father was strange. He did not see her every week-only when he felt like it. I know for a fact several times he did not take her because he was hung-over.

When Autumn was with Bill, she would have nothing to do with anyone else there. Dawn has babysat Autumn for me on several occasions and as long as Bill wasn't around, Autumn played with Dawn and talked to her. Dawn told me several times of Autumn's behavior when he was there. Autumn's behavior was different at home, also, for 2-3 days after a visit with him. Immediately after she came home, she was angry. For the next couple of days she was belligerent, angry-out of control. She was not my Autumn-totally different. Then in August and September Bill saw her frequently. He was going into heart surgery and wanted to spend time with her. At that time I let him have her at his convenience. Sometimes he only wanted her for an hour because she was "too much for him". After his surgery, he didn't see her for about a month. Then he started seeing her pretty steady again until November, 1993. At that time, he was ordered into treatment in Butte by Judge Jewell. He went overnight and walked out of treatment. Since then he has been living in Butte to avoid contempt of court charges.

In October 1993 I started working 3 days a week at the Bullseye Casino. My Mom babysat for me at these times. I got home from work one day and Mom told me Autumn had told her to "tickle my pee". I didn't worry too much about it at that time. Autumn had a bladder infection around mid-September. It took me awhile to catch on to the symptoms. I took her to the doctor on September 30 and she was diagnosed with an urinary tract infection. She had one again in October and then in November 1993. Dr. Keefe ordered some tests on her in November. These tests came back normal. During this time Autumn had told me to "tickle my pee" also.

Once she climbed up into the chair with me, put my hand between her legs and said the same thing. She was rubbing her genital area on everything also. One day while playing with her stuffed animals she was talking to them and popped off with "I'm sorry this hurts, but I love you". At this time Autumn was potty-trained, except at night she wore a diaper. Several times when I took her diaper off in the morning, there was a tan colored spot about 1/4 inch long in the area of the diaper that touched the vaginal area. I also remember one time on a Friday after Autumn had seen Bill, she had a bowel movement and when I wiped her bottom she said "ow, you hurt me". She never said that before or since. I know it was the day after one of their visits because I remember thinking "she saw Bill yesterday" and some warning bells went off in my head but I just couldn't believe it. I put it in the back of my mind. When Dr. Keefe diagnosed her third urinary tract infection she examined Autumn's bottom because there was some irritation there. She found a small split in the skin at the base of the vagina (epesiotomy area). My first thought was Bill. But the doctor said it was fresh and Autumn hadn't seen Bill for 2 weeks. Dr. Keefe said it could have been caused by a fall. I put it in the back of my mind. Then Autumn didn't see Bill again until Christmas Eve. During that time, she got back to her usual self. She would play alone in her room again and didn't have to be with me all the time.

When Bill and I were together Autumn was tiny. I left him when she was 8 months old. While we were together, Bill drank a lot. He would stay out until 2 or 3 a.m., then come home mad and drunk and slam things around, all the time yelling at me. This, of course, would wake her up-she was very nervous. When I left him, I stayed with my Mom for awhile. I couldn't get out of Autumn's sight without her getting hysterical. It took about 3-4 months before she trusted Mom enough for me to even leave the room.

Well, after Autumn's visits with Bill in 1993, she got that way again. For those 2-3 days after a visit, she would cling to me. We live in a trailer and I couldn't even walk down the hall without her chasing me crying "Mommy's finger". She had to hold onto me.

I should have put this all together but I didn't until Christmas Day. Autumn saw Bill Christmas Eve for 2 hours. Christmas Day she hung on me all day. I could hardly put her down and she would be screaming at me, "carry me". She was behaving terrible all day and the next 2 were almost the same. My whole family commented on it.

The Monday night after Christmas Autumn was up all night. I took her to Dr. Reynolds Tuesday, he found ear infections. I talked to him about my concerns and he referred me to Dr. Gunderson he said she specialized in the area of molestation. I talked to Dr. Gunderson on the telephone that afternoon and told her everything. She said Autumn's comments were not normal for her age. She had to have heard them somewhere. She told me to contact Family Services and we set up an appointment for her to examine Autumn.

October 6, 1994

I am writing this letter and enclosing a newspaper article from the Independent Record date October 3, 1994.

Hopefully, after reading the article and what I have to say, the lawmakers of the State of Montana will wake up and take notice of this crucial problem.

The problem of children being sexually molested by anyone is something that nobody wants to deal with. It's been a problem for many years. How many more years do children have to live in fear of child molesters being treated too leniently by the law that is supposed to serve and protect us all? I certainly hope not one more year goes by without our laws being changed.

Child molesters in my mind are just as bad as someone who kills someone else. When a child is molested a part of that child dies. No-one really knows what part is dead and gone, but something inside of that child is taken away and can never be replaced.

I am appalled and dismayed by the lack of laws to protect our children from child molesters. There are more child molesters out in the world than people care to think about. Well, this person cares because I have to think about one everyday until he's arrested and brought to court. I don't like to have to look over my shoulder every waking moment of my life and to sleep with a gun under my pillow and I shouldn't have to if the laws were more severe against child molesters. My daughter will have nightmares for the rest of her life. There is nothing anyone can do about that. But, if you as a group change our laws to be more severe, then maybe, just maybe, it would deter some of these sick people to not commit that crime in the first place.

I understand that there is a problem with prison over-crowding. Build more. Criminals are supposed to be in prison, not free to commit crimes again. Child molesters are the worst kind of criminal there is. They pick on helpless, defenseless children who can't fight back. What cowards they are. They torment their victims not only physically but mentally too. My daughter was told by her molester that if she told anyone about what he was doing that he would kill me (her mother) and her 2 brothers. We were all she had! What a horrifying thing for a child to live with. Be molested and be quiet about it or your mom and brothers are dead and gone forever. Child molesters are the sickest most vile people in this world. Something has to be done to change the way our laws deal with them. I am sickened every day by another news report of another child being sexually molested. I'm sure a lot of other people are too. Hence, the reason this letter is being sent to you.

You are a person in a position to change the laws. Make them tougher than they are now. A child molester is allowed out of jail on their own recognizance. I think not. My plea to you as a member of the Lawmakers of this State is to please do whatever you can to change our laws as they are now to laws that are firm, hard and will carry a jail sentence for life without

I called the Department of Family Services and talked to Don Thompson. I laid it all out for him along with the accusations made against Bill by Tiana Pullman. Mr. Thompson told me that Autumn's comments were definitely abnormal. He said it sounded as if something were going on. He said there may not be any physical signs on Autumn but Bill could be grooming her. He said she's too young to interview and they basically couldn't do anything.

I talked to Dawn and asked if Bill had been alone with Autumn during Christmas Eve. She said he had taken Autumn downstairs at one point for 10-15 minutes. She said "and that's really strange, Rinne, because there's nothing down there but bedrooms-nothing to show her". She also told me that Bill carried Autumn the whole time she was there. Don Thompson said that wasn't normal and who knew what he did while he carried her.

We went to see Dr. Gunderson and the only physical thing she saw was the scar tissue where she'd had the split.

All of these things put together point to the same thing-Bill has been messing with my (his) daughter. Dr. Reynolds, Dr. Gunderson, Don Thompson and my counselor, Bailey Molineaux all agree that something has been happening. But, because of Autumn's age, (2 years) no one can help me protect her. My lawyer Vivian Marie at Legal Aid Services says I don't have enough evidence to take before a Judge and get Bill's visitation pulled.

Autumn's behavioral change, her comments, the bladder infections and visits coinciding, her regression-no one can tell me that Bill is not molesting my 2-year old daughter. I will do whatever it takes to stop him. I just wish I could protect any of the unknown children to come, if he isn't stopped.

ERINNE MARIE HASKETT
Erinne Marie Haskett

You should also know that Bill is very violent when angered. Nina and I both have restraining orders against him. He can be dangerous.

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convince me that these people can be rehabilitated and be able to function normally in society. It has already been proven time and again that they keep on doing it whenever and wherever they get a chance to. How many more of our children have to be subjected to a "cured" child molester? I certainly hope not one more. One is too many. Adults are supposed to love and protect children, so lets see how many adults we have in our Legislature who care what happens to children. I want to see a change in our laws that will do that and I am sure any loving parent wants the same thing.

I understand that it is hard to relate to this problem unless it affects you personally. Please listen when I say that this problem does affect us all as a society in more than one way. If something drastic isn't done soon, people will see more and more child molesters. Children live what they learn. It is a proven fact that most molesters were at some time in their life molested also. If this vicious cycle of child molesting does continue you will also see more angry parents taking the law into their own hands and dealing with these criminals on their own. That is one way of dealing with this problem but it is not the right way. Please, please help our children to be protected as much as is humanly possible. That means, don't let them out on their own recognizance for any reason at any time. They are a danger to our society which does include our minor children. If we as parents now can't raise our children in a safe environment, what kind of a world will it be when they are ready to earn their way? Not good, I would suspect.

You are where you are to provide us as citizens with laws to serve and protect us. I would really appreciate seeing some changes in our laws that do that, serve and protect us better than they do now, especially for our children.

Sincerely,

Nina
MACem Member

Tiana

Hello, my name is Tiana Jolene Pullman. Most friends and family members call me T.J. I am your average teenage American student. I go to school, I have a job, have friends, do the occasional mishaps that kids will do etc. However, there is one thing that makes me different from a lot of my peers. I was sexually, emotionally and mentally violated from the time I started kindergarten to my sixth grade year. The person that did this to me is Bill Haskett. This is hard for me to write about, but I am stronger now and I know that this needs to be done. I need to lay it to rest, so that I can hopefully, for once in my life, be at peace with myself.

Bill Haskett is a danger zone for anyone that comes into contact with him. I can now finally face what he did to me, but I can't live with myself if I don't help stop him now before he hurts someone else. He is very good at making people think he is the one who is the poor soul in any situation. If he doesn't get stopped now he'll keep doing this and it's about time I've told my story.

First of all, let me explain my relationship to Bill. Bill was my Mom's Nina M. Pullman, boyfriend. He lived with us. I have two older brothers as well, Clint A. Pullman and Levi A. Pullman who will also be a part of my story. There will also be another person whom I will mention, Aaron LaPierre, that was my brother Levi's best friend who lived with us for awhile. The person that can best help us out is Jeni M. Apperson, she was my best friend from the 4th-6th grade. She was there during the different times of different things happening.

I will not start off by saying and telling about things that happened to me personally. He (Bill) hurt my mom and my brothers in various occasions. Then I will tell my own story.

While reading this please keep in mind that I do not think of myself as a hateful person. I believe all people are special in their own way. Bill Haskett, in my opinion, is a scum and definitely, not a human being in my eyes. I hate him and I believe I have the right to hate him. He took away my childhood, my innocence, and for the rest of my life I will have nightmares and even with the man I love I get scared at times. I know that they don't hang child molesters but God how I wished they did. My nightmare of him coming after me will never go away until he's dead or locked up in prison where he belongs. I just don't want him to have the opportunity to do what he did to me to someone else. I think he should go to prison and have counseling while in prison. I think that if he continues to be able to see his daughter, supervised or not, he'll find a way to do the same things to her that he did to me. In other words, let that child have a chance in life and keep him away from her permanently.

The first thing I want to tell about is my Mom. I love my Mom. She's my best friend in the world. It took me a long time to find that out, but I finally have. My Mom struggled to make the best life possible for my brothers and I. She worked long hours at whatever job she had at the time. Bill didn't believe in a job for himself. He was an "artist". Even when he did get a job, he thought he was worth his weight in gold or something because he never had one for very long. He drank and smoked away every damn penny he got his damn hands on. Bill was a very mean drunk. The littlest things would set him off and he would always take them out on my Mom. If I had a penny for all the times he beat my mom, I could go on one hell of a shopping trip. The thing he liked to do the most was back her into a corner and just start punching her. He didn't slap, he punched. He thought she was his own God-damn punching bag or something. I remember one time, I think it was second grade or something, he was having a fit and he broke one of these flower things we made in school for my mom. Mine was one of the prettiest. I'll never forget that. One time I heard my mom screaming and then the next thing I heard was Bill screaming and gasping, she threw hot tea all over his neck to protect herself. All I have to say about is good for her. I don't think the physical pain was half as bad for her as the mental and emotional strain he put on her. It hurts to even remember all of this. I know that she really was in love with Bill. Obviously, he knew her weak spots left and right. No matter what he did to her, he could always get her to take him back. Somehow he could always make her to feel bad when it was him who should feel like the shit that he really is. I don't really know everything that he put her through because I was young and for a long time I blocked that whole part of my life out. It's hard to just wake up one day and have to tell about a part of me that I'd just like to forget. I think with that part you would have just had to be there to see what he did to her.

Levi and Clint were my life when I was younger. I thought my older brothers were God. Sure we fought. What normal siblings don't. But, I love my brothers and when it comes right down to it, I'd die for either one of them. Bill drove Levi away in a big way. I hate him for that. One time, Levi was probably 13 or 14, they were having a poker party and the music just shook the whole house, it was a school night and it was late. Levi went upstairs and turned it down, Bill freaked and cranked it up louder than before. Well of course that set things right off. I was in my room so I didn't see anything but I heard a struggle. Another time Levi went to help my Mom when Bill was beating her and then Bill started in on Levi. That time Clint and I both snuck upstairs to see. I was terrified, I though he was really going to hurt him. I don't remember what happened at the end of that. The scariest thing I remember about Bill and Levi, still makes me shiver to this day. Levi had broken his jaw and it was wired shut.

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He had just gotten it unwired and I remember Bill and Levi had been fighting about something. Levi and Aaron were in their room talking to Mom about Bill and Bill walked in. I wasn't there at that time but then I heard yelling, so I ran downstairs to see what was going on. Bill had Levi down on the floor and was just about to punch him in the mouth when Aaron jumped on him. God, if Aaron wouldn't have been there that could have done some serious damage. I don't remember all what happened afterwards, but Bill left for awhile. Shortly after that Levi got a job. He was helping a guy cut wood and whatnot. Levi did not like people using his things. One night he came home, something of his had been moved or gone or something, I wasn't there and I don't remember everything that I was told but at any rate, Levi got kicked out and was staying with my Mom's Mom and her husband. Next thing I knew he was moving to Texas to live with our dad. The night he came to say good-bye to me I started crying. He thought it was just because he was leaving. But when he left a part of me died. Levi was protection for all of us and he was leaving. The more people I had, the more protection I had. Clint was rarely home after that. Before that he was with Levi and his friends a lot. Anyways, they had paper routes and were older so they could leave more, whereas I always had to be home with Bill. Clint and I are so close in age that it caused a lot of conflicts. I don't remember a lot of him. He was there, but I didn't cling to him like I did Levi. I loved Clint just as much as I loved Levi, but we had a much different relationship. I've never talked to Clint about any of this. I don't know why but I just never did. I don't even remember Bill hitting Clint, he was just more the type to leave other than stay around and get into it. He still is that way. He played sports and band, had a lot of friends, etc. I think that was his escape after Levi left. Clint left after Bill was gone for good, but I do know with all my heart and soul that if he would have left when Bill was still there I would have lost the little bit of sanity that I had left at that point in time. Just to point out Clint's calmness in situations I can recall the Christmas of my 6th grade year. I had told my Mom and Bill was out for good. I think it was the evening of Christmas Day. Mom, Clint and myself were at the table in the kitchen playing rummi-kube. We heard a knock at the back door and Mom went to answer it. It was Bill and he wanted to come in and talk. Mom stayed calm and told him to please leave. He wouldn't leave and then he proceeded to try and knock the door down. There was a butcher knife sitting on the counter and I immediately jumped up and grabbed it. I've never been filled with so much hatred in my life than in that point of time. All I wanted to do was run down those three stairs and plunge that knife right into his heart and then twist it a bit. Through all of this Clint sat there and looked calm as a cucumber. He told me in a low voice calm and steady to just sit down and relax. Then he took my knife away. Bill finally left and Mom immediately call over to Bill's Mom's house and told her to keep her son away from our house. Then Jim (Bill's brother) got on the phone and said she was crazy because Bill had been home all night and hadn't left to go anywhere. Whatever.

After that night I slept with that butcher knife for a long time. Even now I sleep with a knife. I don't think I've ever exactly felt safe. I hope someday I do. But I have a feeling that that day will only come when I know he's in prison where he belongs behind bars or dead.

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To write about what Bill did to me is very hard for me. I felt embarrassed and ashamed for my whole life. I not only feel anger because things that happened should have been saved for me for when I was with the man I love and want to be with. He took away that innocence and no matter what I do, did, or thought about I could and never can change that.

I don't remember a lot of things that happened. I'll see or hear something and I'll have this "flashback" it doesn't matter where I am. It's very scary and I'm glad in one way that I can remember but on the other hand I just wish that I could forget all of it forever. Maybe writing this will help me, but I guess only time will tell. I feel that one reason I don't remember a lot is because I was so young. But the real reason is mainly because, as things escalated I put myself in this shell. I would just go to this far off land and not think about what was happening. I guess I'll just start by telling about different incidents that happened.

When things first started it would start out with Bill saying "give me a back-rub". That was fine. Then it would start with "rub me all over". He told me not to be afraid to touch his penis because it was just skin. That went on for the first few years.

I started to develop at an early age, on top of that I was fat, so that made it even more so noticeable. Bill started to grab my butt and breasts when no-one was around whenever he could. I think I was about nine or ten when he grabbed one and I told him "you best keep your hands off of me!" Then he told me that if I ever said a word of this to anyone that he would kill my Mom and my brothers. What was I supposed to do? That was all I had in my entire life. So, I continued to do whatever he wanted, whenever he wanted.

A short time after that I came home from school one day. Bill told me to come into his room. He was in bed, naked, and he told me to rub him. I did and he started to ejaculate. It scared me so I ran down to my room and backed up in my closet. Bill ran downstairs after me and grabbed me and told me to grab him on the penis. I was so scared. I remember crying and screaming, but he wouldn't leave. I did what he told me until he ejaculated again. He made me taste it. I threw-up after that. That was definitely the most degrading thing in the world.

I remember another time Bill made me stay home from school two days in a row. He made me take off my shirt and he would straddle me and just rub and rub. Both days I was to act like nothing was wrong and just pretend I went to school when my Mom found out she thought I'd skipped school, so she grounded me. That one I'll never forget.

I remember one time my Mom found my shoes in her room. She asked me what they were doing in there. I was so scared. What would she do, better yet, what would Bill do? I told her that I just kicked them off in there while Bill was talking to me. I don't remember what happened that day, but I do remember how much I just wanted to hug her and tell her everything.

One of the most scariest times of all, and that will always stick in my mind was the day he showed me "what Mommy likes." that's

exactly what he said. He made me strip down and then he got on top of me. He licked me from my throat all the way down to my vagina. That was the first time he had oral sex with me. Then we heard a knock on the door. It was a police officer. Bill made me go answer the door and say he wasn't there. I had been crying and the officer asked me what was wrong. I don't remember what I said to him, but I remember he wasn't, or at least didn't seem to be, convinced. I wanted to scream at the top of my lungs, "He's in the bedroom!", but I didn't. God knows what would have happened if I did.

I remember hiding behind the furnace a lot. You had to be really small to fit back there and I knew he couldn't get back there. It was the safest place in the whole house for me. I remember it being kind of like my "sanctuary".

I know I didn't write a whole lot about the things that Bill did to me, but the things I do remember I live with "24-7". The things I don't, come alive every night. Now so more than ever. I just want this to be done and over with. Mainly so that I can go on with my life and definitely so that he can be stopped. He's hurt enough people for one lifetime.

I'm not doing this to hurt anyone or cause anyone problems, except, Bill deserves this. I've never got to confront him myself and I really think that that is something I need to do in order to move on with my life.

To anyone whom may read this, please remember I was just a child when all of this occurred. I never said anything until the beginning of my sixth grade year in school. Please also remember that writing this was the hardest thing I have ever done in my whole life. I will come back there whenever I need to for whatever reason. Whether it is for Erinne's case or my own. We all need to come together and stop this man. It's never too late. I am going to be fine, but he doesn't need to be on the loose and able to harm anyone else ever again.

T.J. Pullman
01/30/94

AMENDMENTS TO SB 206 AS INTRODUCED

PAGE 3:

AMENDMENT 1) LINE 18- FOLLOWING: "because"; INSERT: "of an allegation"
(SEE ISSUE 1)

AMENDMENT 2) LINE 26- FOLLOWING: "whenever"; INSERT: "temporary"
(SEE ISSUE 2)

PAGE 5:

AMENDMENT 3) LINE 14- FOLLOWING: "(b)"; STRIKE: "knowingly"; FOLLOWING: "commits or";
STRIKE: "knowingly";
(SEE ISSUE 3)

PAGE 6:

AMENDMENT 4) FOLLOWING LINE 2: INSERT: "(13) 'Investigator' means an official trained by, or who has had training verified by the department and who meet definite qualifications set by the department in the investigation of child abuse, neglect and endangerment. Investigators can be, but are not limited to being social workers, officials of the county attorney's office, and peace officers." -
RENUMBER SUBSEQUENT SUBSECTIONS
(SEE ISSUE 4)

AMENDMENT 5) FOLLOWING LINE 16: INSERT: "Treatment Professional" means any physician or mental health practitioner who has knowledge, training or experience in the diagnoses and treatment of child abuse, neglect or endangerment cases."
(SEE ISSUE 5)

AMENDMENT 6) LINE 21- FOLLOWING: "person"; INSERT: "who has not been involved in a verified sexual offense,"
(SEE ISSUE 6)

AMENDMENT 7) LINES 26 AND 27- FOLLOWING: "(20)"; STRIKE: ENTIRE SUB-SECTION;
INSERT: "'Social worker' means a person who has been educated or trained or is receiving education or training in a program of Social Work; and who has had verifiable training or who has specific training by the department in the investigation of child abuse, neglect and endangerment."
(SEE ISSUE 7)

PAGE 8:

AMENDMENT 8) LINE 27- FOLLOWING: "(5)"; INSERT: " Except if the person is a minor or a family member of the subject of the report;" FOLLOWING: "must be made under oath"; INSERT: "to the best of their knowledge"
(SEE ISSUE 8)

AMENDMENTS TO SB 206 AS INTRODUCED (CONT.)

PAGE 9

AMENDMENT 9) LINE 5- FOLLOWING: "believe"; INSERT: "believe to the best of their knowledge and"
(SEE ISSUE 8).

AMENDMENT 10) LINE 10- FOLLOWING: "neglected," ; STRIKE: "a social worker or the county attorney or a peace officer"; INSERT: " an investigator"-
(SEE ISSUE 4)

AMENDMENT 11) LINE 14- FOLLOWING: "section," ; STRIKE: "a social worker"; INSERT: " an investigator"
(SEE ISSUE 4)

AMENDMENT 12) LINE 20- FOLLOWING: "home"; INSERT: "except as provided for in 41-3-301, or for the purpose of an examination at a health facility to corroborate evidence of abuse, neglect or endangerment suspected by the investigator pursuant to subsection 4 of this section."
(SEE ISSUE 9)

AMENDMENT 13) LINE 21- FOLLOWING: "(3) The" ; STRIKE: "the social worker"; INSERT: " the treatment professional"-
(SEE ISSUE 5)

AMENDMENT 14) LINE 22- FOLLOWING: "facility," ; STRIKE: "the social worker , county attorney or peace officer"; INSERT: " the investigator"-
(SEE ISSUE 4)

AMENDMENT 15) LINE 25- FOLLOWING: "by" ; STRIKE: "the social worker , county attorney or peace officer"; INSERT: " the investigator"
(SEE ISSUE 4)

AMENDMENT 16) LINE 28 and 29- FOLLOWING: "by" ; STRIKE: " the independent examining psychologist or physician"; INSERT "an examining treatment professional not employed by the state";
(SEE ISSUE 10)

AMENDMENT 17) LINE 29- FOLLOWING: "child" INSERT: "is taken to a medical facility for the purpose of determining whether there is evidence of abuse, neglect or endangerment of the child"
(SEE ISSUE 10)

AMENDMENT 18) LINE 29- FOLLOWING BOTH OCCURRENCES OF: "by"; STRIKE: "the social worker"; INSERT: "the investigator"
(SEE ISSUE 4)

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AMENDMENTS TO SB 206 AS INTRODUCED (CONT.)

AMENDMENT 19) LINE 30- FOLLOWING: "family"; INSERT: "or a treatment professional representing the family or both."
(SEE ISSUE 5 and 10).

PAGE 10:

AMENDMENT 20) LINE 11- FOLLOWING: "report" INSERT: "pursuant to 41-3-205."
(SEE ISSUE 11)

PAGE 11:

AMENDMENT 21) LINES 3 THROUGH 5- STRIKE ENTIRE SUBSECTION (5). RENUMBER SUBSEQUENT SUB-SECTION.
(SEE ISSUE 12)

AMENDMENT 22) LINE 30- FOLLOWING: "~~without~~"; STRIKE: "with"; INSERT: "without"
(SEE ISSUE 13)

PAGE 12

AMENDMENT 23) LINES 21 AND 22- FOLLOWING: "by" ; STRIKE: "a social worker , county attorney or peace officer"; INSERT: " an investigator"-
(SEE ISSUE 4)

PAGE 13

AMENDMENT 24) LINES 20- FOLLOWING: "protective" ; STRIKE: "social worker"; INSERT: " investigator"
(SEE ISSUE 4)

PAGE 15:

AMENDMENT 25) LINE 15-FOLLOWING: "~~The~~"; STRIKE: "After filing criminal charges alleging abuse or endangerment against a family member or family associate, the"; INSERT: "The"
(SEE ISSUE 14)

PAGE 16:

AMENDMENT 26) LINE 22-FOLLOWING: "adoption"; INSERT: "only after having filed criminal charges alleging abuse or endangerment against a family member or family associate"
(SEE ISSUE 14)

PAGE 17

AMENDMENT 27) LINES 20- FOLLOWING: "protective" ; STRIKE: "social worker"; INSERT: " investigator"
(SEE ISSUE 4)

AMENDMENTS TO SB 206 AS INTRODUCED (CONT.)

PAGE 18:

AMENDMENT 28) LINE 29-FOLLOWING: "child's"; STRIKE: "residence within 4 hours of the change"; INSERT: "whereabouts as soon as possible where appropriate pursuant to 41-3-205 and 41-3-301."

(SEE ISSUE 15)

AMENDMENT 29) LINE 30-FOLLOWING: "(5)"; INSERT: "(a)"

(SEE ISSUE 15)

PAGE 19:

AMENDMENT 30) FOLLOWING LINE 1 INSERT: "(b)"

(SEE ISSUE 15)

AMENDMENT 31) FOLLOWING LINE 3 INSERT: "(c) The entitlements and in (5) (a) and (5) (b) may be expanded where deemed appropriate by the department and do not apply or may be restricted if criminal charges have been filed or if deemed inappropriate by the department or the court pursuant to 41-3-205 and 41-3-301."

(SEE ISSUE 15)

PAGE 22

AMENDMENT 32) LINE 20- FOLLOWING: "two" ; STRIKE: "medical doctors"; INSERT: "treatment professionals"

(SEE ISSUE 5)

PAGE 24:

AMENDMENT 33) LINE 1- FOLLOWING: "department"; STRIKE: "shall" INSERT: "may"

(SEE ISSUE 15)

AMENDMENT 34) LINE 2- FOLLOWING: "with"; INSERT: "appropriate"

(SEE ISSUE 15)

AMENDMENT 35) LINE 2- FOLLOWING: "home"; INSERT: "pursuant to 41-3-205 and 41-3-301."

(SEE ISSUE 15)

Feb. 6, 1995

In opposition to Senate Bill #206

I Testify to the following:

I am a member of the MACM group. "Majority Against Child Molestation".

The Lewis & Clark Co. Attorney accepted an invitation to speak at one of our meetings. He agreed to be audio-taped.

He informed us that his immediate staff consists of himself and five (5) deputy county attorneys.

If they manage to process 250 felony cases in a year, he considers it to have been a good year. However, there are some years where "major" felony cases, such as the present Magter Case arise, therefore leaving some felony cases unprosecuted.

He went on to explain Child molestation cases are hard to prosecute due to the ages of the victims; also the number of these cases has ballooned in the past 5 to 10 years.

When asked if additional staff and more money would be an asset, he replied that would help.

In questions concerning procedure, he said evidence collected by the attending police officer who first questioned the victim played a major part in the prosecution.

In answer to a question in regard to the education of the officers in molestation cases, he replied they were educated.

We have learned that 2 to 3 weeks ago Ms. Rebecca Valencia-Stencelli, a Victim Contact Specialist from Orangevale, Calif. conducted a seminar for local police officers to educate them on procedure. She was asked to return to conduct further seminars because the officers hadn't been properly educated in some procedures, for example their technique had been to look more for physical evidence, ~~which~~ of course as a rule a child molester usually won't leave bruises or apparent marks, therefore their initial evidence in these cases were lacking.

In this bill, the burdens placed on the officers, social workers and county attorneys, with their limited staff will leave many helpless, innocent children in the hands

CONCERNS ABOUT SB 206 AS INTRODUCEDDATE 2-6-95

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There is a sentiment that the pendulum of concern- erring on the side of child protection- now has to swing back- to err on the side of protecting family rights.

Perhaps, while this is unavoidable, the degree of the "swing" might be dampened. There is a claim that overzealous protection of our children has needlessly violated the rights of too many families. There is an element of truth to this, but the degree of the problem is difficult to determine.

Let us hope that we have learned by this. So that we stem the degree of potentially overzealous protection of family rights. That way, we may keep too many children from needlessly suffering and dying.

- ISSUE 1) CLARIFYING ALLEGATIONS FROM SUSPICIONS IN AN INVESTIGATION.
- ISSUE 2) CLARIFYING AVOIDING PROSELYTISM WHEREVER PRACTICAL.
- ISSUE 3) SUSPENDING "KNOWINGLY" WHEN SUSPECT IS POSSIBLY IN DENIAL.
- ISSUE 4) SPECIFYING THAT INVESTIGATORS NEED SPECIAL TRAINING.
- ISSUE 5) TREATMENT PROFESSIONALS WITH SPECIFIC EXPERTISE ARE NEEDED.
- ISSUE 6) CLARIFYING APPROPRIATE EXPRESSIONS OF CONCERN AND LOVE.
- ISSUE 7) CLARIFYING DEFINITION AND QUALIFICATIONS OF SOCIAL WORKERS.
- ISSUE 8) WHO IS NOT APPROPRIATE TO BE REQUIRED TO RENDER OATH'S.
- ISSUE 9) CLARIFYING RESTRICTIONS FOR REMOVING THE CHILD FROM THE HOME.
- ISSUE 10) CLARIFYING EQUAL REPRESENTATION FOR THE FAMILY IN AN EXAMINATION.
- ISSUE 11) CLARIFYING THAT CONFIDENTIALITY STATUTES ARE FOLLOWED.
- ISSUE 12) RESTRICTIONS ON HEARSAY EVIDENCE OF THE INVESTIGATORS.
- ISSUE 13) PRESERVING CONFIDENTIALITY OF REPORTERS OF ABUSE.
- ISSUE 14) WHEN CRIMINAL CHARGES ARE APPROPRIATE.
- ISSUE 15) PROTECTING FAMILY RIGHTS TO CHILDREN AND RELIEVING DISTRESS.

CONCLUSIONS: There is a need to protect both the rights of the family as well as the safety of the vulnerable individual. It is accepted practice wisdom that families as well as children are best treated as part of a system- a family unit- to break cycles of abuse that are visited upon succeeding generations. Yet it serves no one to disrupt families needlessly, for obvious reasons. We can ill afford to diminish the confidence of the public, waste the time and

ISSUES DESCRIBED TO SB 206 AS INTRODUCED

ISSUE 1) CLARIFYING ALLEGATIONS FROM SUSPICIONS IN AN INVESTIGATION.

This amendment would help clarify the intent of the bill- that is to protect both the family AND an abused child, as well as free the investigator's time to focus on legitimate cases.

(SEE AMENDMENT 1)

ISSUE 2) CLARIFYING AVOIDING PROSELYTISM WHEREVER PRACTICAL.

Clearly, whenever a TEMPORARY placement is made, this seems only fair and wise. It seems impractical that a PERMANENT placement could ever realistically achieve this measure.

As a matter of policy, it is questionable whether the state should create impractical burdens on limited resources that provide for the shelter, safety and well being of seriously threatened children. We should avoid discouraging foster care or group home services.

However, it could depend upon the LENGTH of a temporary placement as determined by a treatment plan or other recommendations.

(SEE AMENDMENT 2)

ISSUE 3) SUSPENDING "KNOWINGLY" WHEN SUSPECT IS POSSIBLY IN DENIAL.

A predominant characteristic of sexual offenders is that they are under the burden of personal DENIAL. This internal conflict produces a web of deceit and secrecy which is so profound that it prevents the persons involved from admitting any history of sexual abuse or sexual victimization they have to THEMSELVES, as well as others.

To them, they may never have committed these acts "KNOWINGLY". Unless they receive an intervention coupled with treatment for their disorder, they may never even know that they don't know.

It is similar to the dilemma of a chronic alcoholic, who compares themselves to other practicing alcoholics. The association with other alcoholics makes voluminous drinking, constant hangovers, DUI's and horrendous behavior while intoxicated actually seem only normal.

(SEE AMENDMENT 3)

ISSUE 4) SPECIFYING THAT INVESTIGATORS NEED SPECIAL TRAINING.

Training and qualifications would provide for consistent practice and application of the mission of "FAMILY" services, in accord with state policy, and would further the intent of this bill.

(SEE AMENDMENTS 4, 10, 11, 14, 15, 18, 23, 24, 27)

ISSUE 5) TREATMENT PROFESSIONALS WITH SPECIFIC EXPERTISE ARE NEEDED.

CERTAIN health professionals have specialized knowledge and experience vital to the identification of the symptoms and APPROPRIATE diagnoses of child abuse, neglect, or endangerment. Abuse is sometimes very difficult to diagnose, even by a competent health professional who otherwise may not have this knowledge.

This knowledge is critical in determining a need for further action; where the best treatment should be, or whether there should be a separation, temporary or otherwise, for the safety and treatment of the of the child and the appropriate treatment of the family.

As important, this knowledge would expedite an investigation help re-unite families as quickly as possible.

Within the intent of this bill, the state will decide that "there is no room for error" in the enactment of child protective services. So the state must use qualified professionals to provide the critical information needed to get the most accurate results from these investigations as possible.

(SEE AMENDMENTS 5, 12, 19 AND 22)

ISSUES DESCRIBED TO SB 206 AS INTRODUCED SB 206**ISSUE 6) CLARIFYING APPROPRIATE EXPRESSIONS OF CONCERN AND LOVE.**

Sexual offenders and their chronic victims are struggling with personal DENIAL and could never be expected to decide what is a "REASONABLE" contact with another persons genitalia.

Issues about appropriate expression of "concern" or "love" are confused by persons with this disorder and may never get this straight by reasonable community standards.

(SEE AMENDMENT 6)

ISSUE 7) CLARIFYING DEFINITION AND QUALIFICATIONS OF SOCIAL WORKERS.

Proper training and qualifications are vital to protect the rights and safety of families and especially children. The state sets the criteria with which it can hold itself, and the professionals it employs reasonably and legitimately ACCOUNTABLE for the public good.

Law enforcement officials operate within strict guidelines and standards determined by the state. They are extensively trained in matters specific to their mission. They are generally recognized by the community as there to enforce the law and to be of assistance. That is consistent with their mission "to protect and to serve."

Social workers in child protective services TODAY are in the unenviable position of having to address cases in which their actions are open to legitimate criticism REGARDLESS of what they do. They are at times put in direct conflict with their own professional ethics within the guidelines of current statute. THEY must choose whether to potentially harm a family, or potentially leave children at risk of being harmed. The public, the community and the state allow little room for error.

If the intent of this bill is to "restore public confidence in the child protective system AND to provide protection of individual and family civil rights" within constitutional guidelines, then proper knowledge and training is a critical. This should be a necessary requirement clarified in statute before the state sends officials out to intervene in a crisis or perhaps needlessly interfere in peoples lives.

(SEE AMENDMENT 7)

ISSUE 8) WHO IS NOT APPROPRIATE TO BE REQUIRED TO RENDER OATH'S.

Persons cited UNDER THESE SECTIONS perhaps should be held accountable for their allegations. This might reduce the number of incidences of "vindictive", "harassing" or "trivial" reports. Investigators, who by law must investigate each case, might be freed to spend their time completing the more substantiable investigations in their caseload and hasten the return of children to their families wherever possible.

But there is a need to protect real victims and members of their family, and allow them to make reports that could reveal imminent danger to a child. Threats of violence and retribution are a predominant way that perpetrators sustain the veil of silence about abuse within the family. The mandate of having to testify under oath can only deter such reports.

We must ask ourselves what it would mean if the report is from the victim who is a child?

However, it is necessary to avoid prohibitively restricting mandated reporting, hence the additional clause "to the best of their knowledge" has been added along with the oath wherever applicable.

(SEE AMENDMENTS 8,9)

ISSUE 9) CLARIFYING RESTRICTIONS FOR REMOVING THE CHILD FROM THE HOME.

This amendment would allow for greater consistency for the dual goal of this bill.; protecting the child and the family. It also accounts for emergencies and would allow for an investigation to proceed with the removal of a child from the home ONLY to provide for corroboration if necessary.

(SEE AMENDMENT 12)

ISSUES DESCRIBED TO SB 206 AS INTRODUCED

ISSUE 10) CLARIFYING EQUAL REPRESENTATION FOR THE FAMILY IN AN EXAMINATION.

These amendments clarify that there is a qualified professional observing the examination on behalf of the family, insuring that the family is represented equally AND FAIRLY.

In the case where a representative of the family can not be made available, at least there is recourse for the family. Again, the investigator can seek corroboration to continue the investigation if necessary.

(SEE AMENDMENTS 16,17,19)

ISSUE 11) CLARIFYING THAT CONFIDENTIALITY STATUTES ARE FOLLOWED.

This would clarify that such reports would not have to be made in violation of the law and of the ethics of those individuals who are responsible for the care of children in these institutions.

(SEE AMENDMENT 20)

ISSUE 12) RESTRICTIONS ON HEARSAY EVIDENCE OF THE INVESTIGATORS.

There are some serious concerns about this section. The court should have all the available evidence possible to make an informed decision about this serious and complicated issue.

Presumably there would have already been a taping of examinations of the child pursuant to amendments in section 5 of this bill of 41-3-202.

(SEE AMENDMENT 21)

ISSUE 13) PRESERVING CONFIDENTIALITY OF REPORTERS OF ABUSE.

This is unnecessary risk to investigators and community members who are mandated to report. Among the individuals suspected in these cases are the mentally ill and violent.. If the subject of the report is charged and the reporter is among those who would have taken an oath, then the defendant would be allowed to know his accuser in the criminal proceeding. If the subject is not charged then there are other parts of this bill and in statute which should allow for appropriate remedy

(SEE AMENDMENT 22)

ISSUE 14) WHEN CRIMINAL CHARGES ARE APPROPRIATE.

Experts in criminal law must review this issue thoroughly.

The point of making abuse, neglect and endangerment always criminal, (which may vary from misdemeanor to felony charges), can actually be a detriment to keeping families together. However criminal penalties can also help facilitate treatment by mandating it, and providing consequences when treatment plans are not followed. This set of amendments is one compromise available.

Having to file criminal charges against a person for TEMPORARY investigative authority (TIA) could virtually eliminate the ability of officials to investigate cases of alleged suspected abuse properly.

But, it would seem that termination of parental legal rights should not be done without at least the filing of a specific charge against someone. If there are extraordinary circumstances in the case the courts will still have discretion to provide (TIA).

(SEE AMENDMENTS 25 AND 26)

EXHIBIT 16

DATE 2-6-95

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ISSUES DESCRIBED TO SB 206 AS INTRODUCED

ISSUE 15) PROTECTING FAMILY RIGHTS TO CHILDREN AND RELIEVING DISTRESS.

These amendments would at least help mitigate some of the distress experienced by the family, protect the family's rights and be consistent with current law and statutes.

Some allow for guaranteed visitation without unduly threatening the safety of a child or the integrity of an investigation.

It would be helpful for the families comfort and the preservation of their rights and responsibilities toward their children to be given as much information as possible in regards to the whereabouts of their children, and the characteristics of their caregivers as is reasonable and lawful.

(SEE AMENDMENTS 28,29,30,31,33,34 AND 35)

CONCLUSIONS:

There is a need to protect both the rights of the family as well as the safety of the vulnerable individual. It is accepted practice wisdom that families as well as children are best treated as part of a system- a family unit- to break cycles of abuse that are visited upon succeeding generations. Yet it serves no one to disrupt families needlessly, for obvious reasons. We can ill afford to diminish the confidence of the public, waste the time and resources of the state and its workers and increase the potential for errors in an area of public protection where "there is no room for error".

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 2-6-91

FILE NO. SB 206

NASW standards for social work practice in child protection

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(brochure)

DATE 2-6-95

FILE NO. SB206

Mr. Chairman, members of the Senate Judiciary Committee:

For the record, my name is Laurie Koutnik, executive Director of Christian Coalition of Montana, our state's largest family advocacy organization, and a former foster care parent.

I have visited with Sen. Burnett on his measure, SB206, and understand the desire he has to protect families and advocate sound policy regarding the removal of children. His concerns are genuine and most admirable. I, too, am concerned for the protection of families and the loving care of children removed from their homes. But I cannot support this measure as it is written.

No matter how well intentioned this legislation is, it will have devastating effects on those it is designed to help. From my perspective, it is not in the best interest of families, children, foster care families, or the social service agency, Dept. of Family Services, who is compelled by law to investigate every report of abuse or neglect.

If we truly want to help families, then we must have a law flexible enough to allow DFS to meet the unique circumstances of each case. To require the filing of criminal charges may be counter productive to working with a family to return the child back home. Having to outfit every DFS office with enough video cameras and television sets for viewing is expensive and impractical. In some cases, it takes time for a child to develop a relationship with a social worker, psychologist, guardian ad litem, or foster parent, to have enough trust to tell what happened to them. To expect children to be able to verbalize their abuse or ongoing neglect does not happen in one setting in front of a video camera. In fact, my guess is most kids would be intimidated or too ashamed to talk in front of a camera at all. Most of the children in my care were experiencing deep pain of being violated or unloved to talk about it. They simply internalized a lot of emotions. Some cases come to others attention because of drastic changes in behavior patterns, not because the child has visible bruises. Let's not try through "one-size-fits-all law" to cure what takes sensitivity and a delicate balance of law and loving concern for those families we so badly want to help.

Confidentiality is a must for foster care families. With the shortage of placement homes now, why discourage current or future foster care families by violating their confidentiality. It is impractical to think you can move kids at will simply because a natural family would object to a foster home. We don't have enough now to meet the demand. Current licensing procedures and foster care training ensure us some of the best prepared and qualified families in local communities who are dedicated to the love and nurture of the children they serve.

The current process can use some improving, yes, we all agree, but it is my understanding much of what concerns Sen. Burnett and other legislators will be addressed in legislation sponsored by Rep. Betty Lou Kasten HB 186 later this week. Workable solutions for all parties involved will best serve the children. Therefor I recommend a do not pass on SB 206. Thank you.

Submitted: 2-6-95

Laurie Koutnik, Executive Director
Christian Coalition of Montana

TESTIMONY OF MONTANA NURSES ASSOCIATION
ON SENATE BILL 206
REGARDING CHILD ABUSE INVESTIGATIONS

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 2-6-95
FILE NO. SB 206

I am Steven Shapiro appearing for the Montana Nurses Association which represents 1400 registered professional nurses in the State of Montana. As health care professionals, our members frequently discover and care for children who have been subjected to abuse or neglect.

The Montana Nurses Association opposes Senate Bill 206. The bill is based on the erroneous premise that the State's existing child protective system is not functioning properly and causes unfounded accusations of abuse. It asserts that the correction to this problem should be requiring that child abuse allegations be charged as crimes and proven beyond a reasonable doubt before action is taken to protect children who appear to be victims of abuse.

The existing child protective laws are based on the principle that children should be protected first, and disputes over legal technicalities should follow. It already requires immediate action for review by the district court when a child is taken into the State's protective custody. If the court finds reasonable cause, a child may remain in protective custody and the process will begin to treat and ultimately reunite the family.

SB 206 would require that a crime be investigated and charged before a child may be removed from an abusive home. The facts proving the existence of physical or emotional abuse are not always readily apparent or available at an instant. The only direct witness may be a child who has been battered for years, and who has withdrawn into a shell so he cannot speak for himself or let others know of his plight. It may be years, or never, before enough evidence is gathered to gather enough evidence for a criminal charge and longer to process through the court system. Meanwhile, a child may remain under the roof and in the hands of his abusers, perhaps suffering further and being convinced not to testify about what has occurred.

SB 206 appears to be part of a trilogy to weaken the child protective system in this state, including: SB270 proposes the destruction of reports of child abuse and neglect within 20 days of being unable to confirm the report. This will result in professionals being unable to track a pattern of child abuse that develops over time. SB271 proposes to require that an abused child removed from his own home must be placed with his extended family before being placed in other foster care. However, the child may not be adequately protected in this setting, and it ignores the fact that abusive environments frequently include extended families. Together, these three bills would be a great backward step in the protection of the children in our state from abuse and neglect.

We speak in support of the safety and welfare of all of the children of this state. We urge you to protect the children of Montana by voting DO NOT PASS on SB 206.

STATEMENT OF RANDY MILLS
ON SENATE BILL 206
BEFORE THE SENATE JUDICIARY COMMITTEE
MONDAY, FEBRUARY 6, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 2-6-95
FILE NO. SB 206

Mr. Chairman, members of the committee, my name is Randy Mills, I live here in Helena, and I don't lobby for anyone. As a survivor of child abuse, I am strongly opposed to this bill.

In reading this bill, it is clear that the intent is to reduce the number of false allegations of abuse. I feel badly for any family that has to go through the agony of child abuse or the false allegation of child abuse. This bill may well reduce the number of cases of false allegations, but I fear it will increase the number of prosecutions for child assault and even child murder.

At the very least, this bill will have a chilling effect on something that's already phenomenally difficult: getting a child to speak up when they're being abused by a family member or relative. I believe that for every child who does speak up, there are several more who do not or can not. This bill will guarantee that this silent suffering by children will continue not only unabated, but with the blessing of the law.

Child abuse is a very difficult crime to prosecute, and prosecutors do not file charges in cases in which the outcome is unclear. This bill's requirement of a hands-off policy by DFS until the filing of those charges will guarantee that, once charges are filed, they will be for a more severe crime than if DFS could have stepped in earlier.

This state, to its credit, has good laws on the prevention of and response to spousal abuse and even elder abuse. This Legislature is considering bills that would make those laws on spousal abuse and elder abuse even tougher. But as regards abused children, we're considering this bill, which will roll back protection for children, the citizens who are least able to protect and speak out for themselves.

Under current Montana law, when peace officers respond to a report of domestic abuse, arrest of at least one party is the preferred response when violence, the threat of violence or the use of a weapon is suspected or just threatened. This bill would chill that law as regards abused children, but will leave abused adults protected.

Current law requires that a peace officer, at the very least, make a written report when responding to domestic abuse calls, and, if the victim is present, give the victim a list of options, including local safehouses, violence hotlines and so forth. The peace officer is further required to tell the victim of their rights under the law, including the right to get restraining orders and so forth.

This bill would have a chilling effect, again, on peace officers performing that legally required duty.

I suggest that the domestic abuse prevention and response laws at 46-6-311 (and following) and at 46-6-601 (and following) will be at conflict with the provisions of SB 206, and that the clear "hands-off" tone of SB 206 will override any legal requirements found elsewhere in the law.

Mr. Chairman, members of the committee, parents and other adults who may be falsely accused of abuse have my deepest sympathies, however few they may be. How we respond as a society to false allegations is a serious issue that deserves serious consideration. However, children need protection from sexual, physical and emotional abuse, plain and simple. Sometimes, that protection must come in the form of removal from the home, and it must sometimes come swiftly and decisively.

I do not believe that the reputation of adults supposedly falsely accused should be protected at the cost of the silent suffering of our children.

I urge you to bury this bill, rather than watch more children be buried by the fists of abusers.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 21

DATE 2-6-95

FILE NO. SB 206

Judiciary Committee

before 10 a.m. 2-6-95
Thanks

Concerning SB 206 - Judiciary Comm.

Our concerns are;

1st - With regards to anonymous reporting of abuse etc. It is very hard to get people to report anything, even with anonymous reporting it would be next to impossible without the ability to remain anonymous. That is why Crime Stoppers Works.

2nd - Requiring criminal charges to be filed - This sounds good and probably is in most cases.

3rd - Guaranteeing a family communication with the child; this sounds good and is done in most cases, However in a lot of cases with mental, emotional, and sexual abuse; this would allow the parent to continue manipulating the child.

4th - Requiring information on
the Foster Home.
Generally this is alright;
However, there are times
that this would be dangerous
for the foster child and
the foster parent. Where
are you going to find
people that will put
themselves, their family and
their home in the position
of danger and turmoil
that this could cause
for \$10 to \$14 per day?

If you have any questions
or comments please call
me.

Gary Marks

538-3141

— Please deliver by 9:00 A.M. — Room 325 —

206

January 5, 1995
TO: Members - Senate Judiciary Committee
Chair: Senator Bruce Crippen and Senators
al Bishop, Larry Baer, Sharon
Estrella, Lorena Prossfield, Ric
Holden, Reiny Gabe, Sue
Bartlett, Steve Doherty, Mike
Halligan, Linda Nelson

SENATE JUDICIARY COMMITTEE
DATE 2-4-95
EMIT NO 22
50206

and
Senators Jim Barnett & Tom Keating
and Representative Royal Johnson

From: Senor "Bud" Rist

2639 Poly Drive, Billings - Call home: 644-3401
& work 252-2071, collect if you wish

Please listen to Jim Barnett and the evidence he
gives in his testimony. Bobbi, my granddaughter
Tribal Court, and Vonnie, grandmother & my wife
of over 44 years, and myself a 1st generation
American born in Brooklyn - N.Y. & 1 year
grad, work & with 28 years of teaching & school
administration - have 3 legally married sons.
Vonnice & I own a small business & 6 apts. & a
home in Billings for 12 1/2 years (I might add, the
"Vonnice" own some of these also) - enough of that!
Bobbi, Vonnice & I have been terrorized & traumatized
by the Dept. of Family Services, ending in near death
of Vonnice. (Please see letter of Tom Tower, Nov. 26, 1990)
They abused us with no evidence (only their
mind-set - often 2 to 3 social workers, and 2
supervisors & the so called specialists & paid
counselors & psychologist & the County attorneys
office) - this lasted from ~~June~~ August 1989
to June 1990! - 10 months of sheer agony!
Please listen to Jim Barnett & others who
recommmend S.B. 206 & Act to stop the
uncontrolled activities of Dept. of Family Services.
Thank you & I pray, Bud & Vonnice Rist

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 23DATE 2-6-95DRA NO. SB 206

Mr. Chairman & committee members,
Nina Pullman, currently residing in
East Helena, Dept. of Revenue
Member of MACem - Majority Against Child
Molestation.

I have a personal interest in this bill and any other legislation involving children who could be or are victims of abuse of any kind. I was sexually molested as a child & so was my daughter. Any child who is a victim of any kind of abuse needs immediate and professional care. I believe the DFS in this state have been doing their job in this capacity. If this bill passes and the process is changed on how these victims are cared for, I see nothing but problems for everyone involved & a lot more heartache than is already involved. ~~A change does need to be made, but not under this bill.~~ The courts can't handle the caseload they have now. The DFS have been taking care of the problems as they occur, in a timely manner, with people trained to

handle the special needs of abused children.
My final thought on the subject of this
bill is, if it isn't broke, why fix it?

Thank you all for your kind attention
I hope you will all seriously question
the need for this bill at all.

Nina M. Pullman

Nina M. Pullman

Box 1003

E. Helena, MT 59635

444-7881

Mister Chairman
members of the committee
my name is Connie Griffin
I reside here in Helena

EXHIBIT 23
DATE 2-6-95
SB 206

and I am a mother and a member of MACEM 1
I am the mother of two girls
3 & 7

One year ago a doctor
confirmed a story that my
girls had come forward
with. They were being
Raped and molested by their
very own father for
whom they loved and trusted.
Their father is a 6 foot 4
220 pound man,
The little 3 year old weighs
45^{lbs} at the most.

That little girl was penetrated
both ways - causing Rips and
tears, and severe scarring.
She was made to perform
some kind of oral sex.
From what we can understand
she was forced to rub
his genitals until he ejaculated.

The 7 yr old weighs maybe 65 lbs
soaking wet.

By what we were told she was
being groomed.

After bathing she was forced to lie down on a bed^{naked} while he layed on top of her. Rubbing his genitals against her small little body, Simulating intercourse. Her privates were Rubbed with sticks, toys and other foreign objects. She was penetrated with something the size of a pencil. Only because she had a voice that could have been heard.

Dept of Family services were contacted immediately by the doctor. Visitation was suspended. The girls were interviewed again by WFS, and video tapes were taken. In fact we found out later by the county attorney. Video tapes are inadmissable in court, Bicarize you cant cross-examine a video tape. All evidence was collected and given to the county attorney's office. Where it still sits in a file stuck under hundreds of case more important than 2 little girls lives.

At one point he (ex-husband) petitioned the court for visitation.

I received a call from DFS stating.

The county attorney's office had

granted him a visit with the girls, girls. After talking with the girls and ~~the~~ seeing them crying and screaming because they were so

afraid because they were told if they ever told anyone what he was doing to them, they

would be hurt and that I would be hurt and go to jail.

There was no way I was going to see them go through that again.

I made a call to the ^{DFS} Central Office to speak to someone.

I explained what was going on. Needless to say, within

4 hours I had a call from DFS telling me there was to be NO. contact.

~~was~~ because of the threats made to them if they were to tell what was happening.

against all recommendations
after fact to
all professions involved

inst recommended
all parties involved

It has been nearly one (1) year
and this man has not had
one criminal charge ~~pressed~~ filed
against him.

And as the county Attorney
reported to me, There will
not be Criminal Charges.

Only civil charges if even that.
The only thing that is keeping
the 2 little girls from that house &
being raped, tortured and violated
is something called Dependency
Neglect. And Actually he hasn't
even been charged with that
Dependency Neglect is to
deprive a child of Food Shelter
Clothing, & Protection.

As far as the laws go and
from what I have researched
he has committed the following
crimes against his own daughters
Sexual Assault 45-5-502
Sexual Intercourse without consent 45-5-503
Indecent Exposure 45-5-504
Incest. 45-5-507
endangering the welfare of children 45-5-622

Sexual abuse against children 45-5-625.
I don't see where any of these
crimes fit under the
Dependency Neglect Category.
This is NOT A criminal case
According to the County Attorney.
BABY RAPE is not something
criminal in their eyes.
Because the girls are too young
to testify.

This man is able to be
free on the streets and has
complete access to several
children in his home.

because of childcare being
provided at his home (unlicensed)

If it wasn't for DFS ~~for~~ fighting ^{for} my
2 little girls, ^{they} would be back in
that house being RAPED, molested
and violated. because the county
attorneys office does not make
these top priority cases
because they are so hard to
they prove!

And QUOTE "They don't have
the manpower to handle
all the cases reported to them
And QUOTE " ~~They~~ They try to
stay ~~in~~ within a QUOTA
of 250 felony cases a year.
If their Quota is full
what happens to all the
other children that are going
through this? And Anyone that could
do this to a child ~~deserves~~ to does not have ^{parental} rights
We strongly oppose and pray
that all of you oppose
this bill.

Just please consider what
would you do if these little
girls were yours.

Whose hands would you
like your child's life in

Thank You For Your Time

Connie Griffin 458-4754
5940 Aaron Dr
Helena, MT 59601

Page 3
of their molesters and rapists.

The time limits of 48 hrs in section 5 lines 17 through 20 page 9 of this bill will more or less insure the victim will remain in the torture chamber as professional social workers will attest to the fact it can take sometimes months in some cases to get enough evidence to prosecute a molester.

Please do not pass this Senate Bill # 206 as is.

Respectfully submitted,
Sharon Powers Baberson J.P.N.

Member of MACeM
Majority Against Child Molestation

perpetrated by her daddy, whom she loves and trusts, and were pleasurable with the exception of one occasion of which I am sure, our daughter felt mommy should do this also. Her father's action of carrying her all the time would be protected under line 11 as, considered by a reasonable person to be comforting of the toddler by a concerned or loving parent.

These two lines afford a child rapist a loophole in their defense.

We all have to remember how wily and manipulative these people are. They will stop at nothing to achieve their ends, which in my case, would have been to groom our daughter from a very young age, to believe that what he was doing was normal. She believed, as all children do

Mr. Chairman
members of the committee

EXHIBIT 23
DATE 2-6-95
SB 206

My name is Eunne Haskett, ^{lawyer & mother}
and I am the founder of MCEM.

My testimony against Senate
Bill 206 involves lines 21 + 22 on
Page 6 under definitions.

My two year old daughter
~~was~~ ^{was} a victim of her father's love
and concern. She was being
molested by her father in the
presence of several reasonable people.

He has supervised visitation
rights for 3 hours each week.

The entire time our daughter
was with him, he either carried
her or had her sit next to
him on the couch watching
movies. Our daughter told
me, indirectly, that daddy
was molestating her on these
occasions. As she was only two
years old, she thought this
was perfectly normal. She would
come sit by me on the couch
and say "let me sit on your hand
Mummy" or "tickle my pee, Mommy".
Since these actions were

She also
said 3 UTIS
in 3 nos.

She also had
3 UTIS in
3 nos.

of a family member, that he would not harm her or teach her that something so horribly wrong is actually right. If I hadn't caught on to these signs and behavioral signals, our daughter would be well-groomed by now. Her thinking would be perhaps irreparably twisted.

These monsters also use whatever threats required to keep these victims silent.

"~~I~~ I'll kill your mommy"

"Mommy will go to jail"

"No one will believe you"

or in our case, "Daddy will go to jail if you tell".

at two years old, a child should not believe that "cops are bad". My child ~~did~~ ^{didn't}. It's taken me one year to turn my daughter's beliefs around.

Beliefs that were instilled in her in a matter of months by a concerned and loving father whom

she saw only three hours
per week & supervised.

This bill has ~~some~~ ^{some} good
points, but if passed as is -
there will be a lot of
little lines left unprotected.

ERINNE HASKETT
3375 WYLLIE DR., #21
HELENA, MT. 59601
Erinne Haskett

Volunteers find child when police wouldn't

WASHINGTON (AP) — Residents of a halfway house rescued a missing boy and captured his suspected kidnapper after the boy's mother, upset by the lack of police action, sought help from the ex-convicts in her own search.

A dozen District of Columbia halfway house residents discovered the 11-year-old boy and his alleged captor wrapped in a blanket in a wooded area about eight blocks from the boy's southeast Washington home.

The boy was naked and apparently had not eaten in the two days since he was abducted on Thursday while walking to his aunt's house, police said.

The boy's mother said she turned to the halfway house residents and other local volunteers after police officers told her they could not launch an immediate all-out search because the boy did not meet criteria for a critical missing person.

"They told me since he was over 6 and under 85, didn't have a mental condition or a disability and wasn't on medication, they couldn't search for him," she said.

Rahim Jenkins, a halfway house employee who helped organize the search, said that when they approached the pink blanket on the wooded hillside on Saturday, "that baby jumped out and said, 'Please don't leave me, help me.'"

The alleged kidnapper, identified by police as Contee Stevens, 36, of Washington, tried to flee, but was captured by the search party after a 100-yard chase.

The boy's mother, who was about 50 yards away when her son was discovered, witnessed the scene and had to be restrained by friends. A television news crew filmed the chase of the suspect.

Volunteers find child when police wouldn't

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Exhibit No. 24 consists of 16 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 24

DATE 2-6-95

FILE NO. SB206

NAME

ADDRESS

ALL

12345

Michael Cox 2109 Care No.

Nora Claassen 1225-7th Ave So.

Charleen Dabber #2 Trl. Terr. H. Falls, MT.

J. DeBois 600 4th Ave N. GF MT.

Ken Dorian 600 4th Ave N GF MT

R. McWilliams 288 VINGARD RD. BT FALLS

Donnie Brown 820 1st Ave S.W. #104 GF, MT

Viki Schabarber 1513 9th Ave So. Gt Falls, MT

Candy Long 3521 6th Ave N. Gt Falls MT

Shadow Mogensen 506-5th Ave SW

Cathy Collier 1523 4th Ave N. BT FS

Gregory B. White 615 22nd N. Ht Falls

Taneta Shadrach 307 6th St NW GF 59401

Betty Eiler 424 4th Ave So. GF. 59405

Judy Eaker 815 - 135T. S. G.F. 59405

~~Donna~~ 925 6th St NW 59404

~~Donna~~ 816 15th St No. 59401

Sherrill K Bishop 1201 28th St So 59405

Franklin Klein 3805 7th St NE #84 59401

Lois Clark 608 6th Ave N. #5

K. Brown 721 4th Ave SW.

J. F. Fatt 3514 1st Ave N.

June Gort 2011 1st Ave South

DATE 2-6-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 206

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
AL NERLING		206	✓	
Jean Gustaf		206	✓	
Steven Shapiro	MT Nurses Assn	206		X
Kristen Nesling	Sunk River Mt.	206	✓	
ERINNE HASKETT	MACE M	206		X
Velma Morris Fitzgerald	} OUR FAMILY	} 206	X	
FRANK BORING FITZGERALD			X	
Annie Griffin		206		✓
Lauree Kertrik	Christian Coalition MT	206		✓
Dennis PAXINOS	Yllustre Co Atty	206		✓
Randy Mills	self	206		✓
Sterlin Nelson	self	206	X	
Jeff Roberts	self	206	X	
Noel Larrabee	MT Council for Families	206		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-6-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 206

Name	Representing	Bill No.	Check One	
			Support	Oppose
Jack Vincent		206	☒	☐
Amanda Henderson		206	☒	☐
Jimmy Henderson		206	☒	☐
Jimmy O'Neil	Vocal of Montana	206	☒	☐
Wanda Harris		206	☒	☐
GARY WILSON		206	☒	☐
Ed Torres	NASW	206	☐	☒
Andrie Larose	Self & Family (2 children)	206	☐	☒

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-6-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 206

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Pascal Redfern		206	☒	
KAREN KOWALCZYK		206	X	
Tatiana Burton		206	X	
Benny Bernstein		206	X	
Star Bartow		206	X	
Sharon Bakerson		206		☒
Nina M. Pullman		206		☒
Tiana S. Pullman		206		☒
Kelli Clark-Cory		206		☒
Amy Gilkey Gilkey	DFS	206		X
Paul Betumo	Mortons for Due Process	206	X	
WILLIAM V. FOWLER	" " " "	206	X	
KENNETH E. HUGEN	SCOTT	206	X	
MICHAEL V. BILLOREAU	Self	206	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-6-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 206

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
John Schubert		206	✓	
Tammy Schubert		206	✓	
DAVE BRINLEY	SELF	206	✓	
IDA RAEDER		206	—	
Mindy Minter	Self	206	—	
JOHN CONNOR	MT. COUNTY Atty Gen			✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

state cooperative tribal agreements before they enforce tribal codes involving drivers' license suspensions and revocations under a tribal implied ordinance, but it is not necessary that it be in the text of the bill.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR HALLIGAN MOVED THAT SB 189 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 206

Motion: SENATOR HALLIGAN MOVED THAT SB 206 BE TABLED.

Discussion: SENATOR HALLIGAN said that other bills were going through the process that would address the concerns in this bill. He said he had a major problem with the bill because of the "beyond a reasonable doubt," and "requirement of criminal charges," which would require too much work to fix. He hoped the sponsor could be satisfied with the other bills.

CHAIRMAN BRUCE CRIPPEN expressed concern about the motion.

Valencia Lane said she had prepared some amendments from SENATOR BURNETT, but they were not substantial.

Vote: THE MOTION PASSED on a roll call vote. Six members aye and 4 members voted no.

EXECUTIVE ACTION ON SB 266

Discussion: CHAIRMAN CRIPPEN said he had spoken to SENATOR RIC HOLDEN about his concern. The chairman said the bill was prepared on a biennium basis, to which the amendments refer.

Motion/Vote: CHAIRMAN CRIPPEN MOVED THE AMENDMENTS AS CONTAINED IN (EXHIBIT 2). The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: CHAIRMAN CRIPPEN MOVED THAT SB 266 DO PASS AS AMENDED. The MOTION CARRIED on a roll call vote with six members voting aye and four members voting no.

EXECUTIVE ACTION ON SB 266

Discussion: SENATOR HALLIGAN explained an amendment that would allow the bill to reflect a termination date of January 1, 2001 for the Office of the Clerk.

Motion: SENATOR HALLIGAN MOVED THE AMENDMENT. The MOTION CARRIED on an oral vote, with SENATOR SHARON ESTRADA voting, "no."

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2-13-95 BILL NO. SB 206 NUMBER #1

MOTION: _____

Motion - Halligan SB 206 - Table

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		/
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN	/	
STEVE DOHERTY	/	
SHARON ESTRADA		/
LORENTS GROSFIELD		/
MIKE HALLIGAN	/	
RIC HOLDEN	/	
REINY JABS		
LINDA NELSON	/	

SEN:1995
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6 4

TABLED

SENATOR BARTLETT commented the law being referenced is the Omnibus Budget and Reconciliation Act of 1993. This was the major deficient reduction act by the federal government in 1993. The intent behind the child support requirements in OBRA and in this bill is to reduce, to the maximum extent possible, the use of public assistance. In respect to this bill, this would address replacing Medicaid assistance that a parent who is a noncustodial parent, or in the case of medical support perhaps both parents, should be providing to their children. It directly goes to the issue of whether or not we want parents to be responsible for the support and the medical coverage of their children regardless of whether they are married or divorced.

Vote: The motion CARRIED on oral vote with SENATORS BAER and ESTRADA voting "NO".

EXECUTIVE ACTION ON SB 206

Motion: SENATOR HALLIGAN MOVED TO AMEND SB 206.

Discussion: SENATOR HALLIGAN explained the amendments. Pursuant to the Chairman's direction in terms of his discussion with SENATOR BURNETT, the decision had been made to remove everything in the bill with exception of the video language. The amendments did not remove all the language if some of it was new and reasonable, EXHIBIT 5. The major change is that they did not allow the criminal charges to be filed before a child could be removed. Those provisions were removed from the bill. They deleted some of the definitional sections which no longer applied once the language was removed regarding filing criminal charges. On page 6 his definition of sexual abuse of touching of an infant was left in except for the last part. A portion of line 20 and lines 21, and 22 were deleted because that had reference to broad language. The video portion is at the bottom of page 9. The original bill wanted every examination to be videotaped. They changed the tenor of that because there are many statements made to teachers, neighbors, and friends in which there would never be a videotape. That statement could not be used in court if it was not videotaped. They stated that, "If the child's interview is videotaped an unedited videotape and audio track must be made available, upon request," to the family. His concern was that there would not be an opportunity to view that. If the police or social workers make one, it would be available. On line 17, they left a major change. "(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must develop corroborative information in order for the investigation to continue."

Valencia Lane explained a couple of clerical changes. On page 10, line 10, the stricken word "and" needs to be reinserted. At the bottom of page 11, line 30, there is a stricken word "without" and "with" is inserted. The word "with" needs to be stricken and the word "without" needs to be reinserted.

SENATOR HALLIGAN, referring to the amendment at the bottom of page 12, stated that SENATOR BURNETT was concerned that members of the family who were experiencing this would not be able to go public. They left the section in which states this may not be construed to compel a family member to keep the proceedings confidential. They could go to the press or anyone else that they wanted to. On page 13 on the top it states that they could go to a news organization as long as they maintained the confidentiality of the child.

SENATOR BARTLETT, referring to the last provision in terms of allowing the family to talk about a proceeding, asked if the Department would be restricted from discussing this if the family makes the situation public.

SENATOR HALLIGAN believed that they would be restricted.

Ann Gilkey, Department of Family Services, commented that they would be prohibited. HB 186, the Department's general revision bill for child protective services, includes an amendment which would allow the Department to speak to the media as long as the privacy of the family of the child is protected. Under current law they could not respond.

SENATOR BARTLETT commented that in all contested case proceedings where there is a difference of opinion, it is unfair to authorize one party to a situation to make statements without also authorizing the other party to make statements. In these cases, all the parties need to keep the identity of the child protected. She would hate to see the Department limited to say that they are unable to comment on anything. Also, the fiscal note did not address the cost of the videotaping or any increased fiscal impact from videotaping. Would there be a fiscal impact?

Ms. Gilkey commented the Department prepared a fiscal note which did include a fiscal impact for videocameras, tapes, filing cabinets, etc., and SENATOR BURNETT chose not to sign that and prepared an amended fiscal note which took out these expenses. With the proposed amendments, there should not be a fiscal impact in that regard. They could use existing equipment; however, if the amendments do not pass, the original bill did require every worker to have a camera at their disposal.

SENATOR BAER asked how the amendment would affect the fiscal note.

CHAIRMAN CRIPPEN commented it appeared there would not be a need for an amended fiscal note. The bill does not require a video tape. The bill states "if".

SENATOR ESTRADA questioned if SENATOR BURNETT was aware of the amendments.

CHAIRMAN CRIPPEN stated the committee tabled the bill. In subsequent discussions he had with SENATOR BURNETT, they discussed another bill which addressed some of his concerns as well as getting something out of his bill in terms of videotaping. He indicated to CHAIRMAN CRIPPEN that he would be satisfied with that situation.

Vote: The motion CARRIED UNANIMOUSLY on oral vote. .

Motion: SENATOR HALLIGAN MOVED SB 206 DO PASS AS AMENDED. The motion CARRIED on oral vote with SENATORS BARTLETT, ESTRADA and NELSON voting "NO".

{Tape: 3; Side: A}

EXECUTIVE ACTION ON SB 212

Discussion: SENATOR BISHOP commented that the amendment would notify the parties named in the nonparty defense contained in the answer. They would be notified by certified mail.

SENATOR HALLIGAN commented the amendment does not use the right language. The handwritten amendment, EXHIBIT 6, uses the language of the bill.

Motion: SENATOR BISHOP MOVED TO AMEND SB 212.

Discussion: SENATOR HALLIGAN explained that the intent of the amendment is to clarify that a person named in an answer to a lawsuit, if alleged in whole or in part to have caused any of the claimant's injuries, the person will be notified by certified mail that they have been named.

SENATOR BISHOP commented that it is only fair to those parties to have a notice.

Vote: The motion CARRIED UNANIMOUSLY on oral vote.

Motion: SENATOR BISHOP MOVED SB 212 DO PASS AS AMENDED.

Discussion: SENATOR BISHOP disagreed with one of the biggest contentions made by the opponents in that people would be brought into the nonparty defense frivolously.

SENATOR DOHERTY commented that the testimony the committee heard in regard to the verdict form proposed by defense counsel is an example of why the empty chair defense is a question of fairness. He believes that the defense, if they believe someone is involved in an action and may bear some responsibility, has an obligation not only to notify them but should also bring them into the lawsuit as third-party defendants. If they truly believe that the person has some degree of culpability for whatever has happened, they ought to do that. Simply notifying someone so

DATE 2-16-95

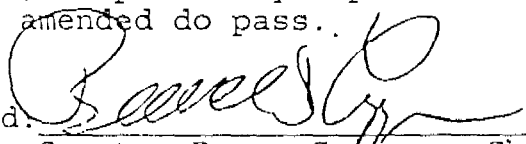
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SENATE STANDING COMMITTEE REPORT

Page 1 of 4
February 16, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 206 (first reading copy -- white), respectfully report that SB 206 be amended as follows and as so amended do pass.

Signed: 

Senator Bruce Croppen, Chair

That such amendments read:

1. Title, lines 5 and 6.

Following: "ABUSE" on line 5

Strike: remainder of line 5 through "WELFARE" on line 6

Insert: "OR NEGLECT"

2. Title, lines 6 through 12.

Following: ";" on line 6

Strike: remainder of line 6 through "HOME;" on line 12

3. Title, line 12.

Strike: "40-8-111," and "41-3-201,"

4. Title, line 13.

Strike: "41-3-204,"

Following: "41-3-205,"

Insert: "AND"

5. Title, lines 13 and 14.

Following: "41-3-206,"

Strike: remainder of line 13 through "41-3-1103," on line 14

6. Page 1, line 18.

Following: "constitutions"

Strike: "; and"

Insert: "."

7. Page 1, lines 19 through 29.

Strike: lines 19 through 29 in their entirety

8. Page 2, line 3 through page 3, line 6.

Strike: section 1 in its entirety

Renumber: subsequent sections

9. Page 3, lines 16 through 21.

Following: "possible" on line 16

Strike: remainder of line 16 through "associate" on line 21

 Amd. Coord.

 Sec. of Senate

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10. Page 4, line 1.

Following: "and"

Insert: "and"

11. Page 4, lines 1 and 2.

Following: "appropriate" on line 1

Strike: remainder of line 1 through "family" on line 2

12. Page 5, lines 6 through 10.

Strike: subsections (8) and (9) in their entirety

Re-number: subsequent subsections

13. Page 5, line 13.

Following: "(a)"

Strike: "knowingly"

Following: first "or"

Strike: "knowingly"

14. Page 5, line 14.

Following: "(b)"

Strike: "knowingly"

Following: first "or"

Strike: "knowingly"

15. Page 5, lines 16 and 17.

Strike: subsection (c) in its entirety

Re-number: subsequent subsections

16. Page 5, line 28 through page 6, line 3.

Strike: subsections (11) through (13) in their entirety

Re-number: subsequent subsections

17. Page 6, line 20.

Following: "sanitary"

Insert: "or health care"

18. Page 6, lines 20 through 22.

Following: "parent" on line 20

Strike: remainder of line 20 through "parent" on line 22

19. Page 7, line 14.

Strike: "(22)"

Insert: "(17)"

20. Page 7, line 23 through page 9, line 6.

Strike: section 4 in its entirety

Re-number: subsequent sections

21. Page 9, line 11.
Following: "~~thorough~~"
Strike: "an initial"
Insert: "a thorough"

22. Page 9, line 18.
Following: "must"
Strike: "within 48 hours"
Following: "develop"
Strike: "independent,"
Following: "corroborative"
Strike: ", and"

23. Page 9, line 19.
Strike: "attributable"

24. Page 9, lines 19 and 20.
Following: "continue." on line 19
Strike: remainder of line 19 through "home." on line 20

25. Page 9, lines 28 and 29.
Following: "(4)" on line 28
Strike: remainder of line 28 through "worker." on line 29

26. Page 9, line 29.
Following: "If the"
Strike: "child is interviewed by the social worker"
Insert: "child's interview is videotaped"

27. Page 9, line 30.
Following: "available"
Insert: ", upon request,"

28. Page 10, line 6.
Following: "and"
Insert: ", upon request, to"

29. Page 10, line 10.
Following: "~~and~~"
Insert: "and"

30. Page 10, line 11.
Following: "located"
Strike: ", and the family of the child who is the subject of the
report"

31. Page 10, line 13 through page 11, line 9.
Strike: section 6 in its entirety

Renummer: subsequent sections

32. Page 11, line 30.

Following: "~~without~~"

Strike: "with"

Insert: "without"

33. Page 12, line 29.

Following: "member"

Strike: "who believes that the family is being victimized by an
unfair or unwarranted process"

34. Page 12, line 30.

Strike: "secret"

Insert: "confidential"

35. Page 13, line 3.

Following: "reporter"

Strike: "has made every effort to avoid publicly identifying"

Insert: "maintains the confidentiality of"

36. Page 13, line 11.

Strike: "under oath"

37. Page 13, line 13.

Strike: "under oath"

38. Page 13, line 19 through page 24, line 12.

Strike: sections 9 through 19 in their entirety

-END-

Amendments to Senate Bill No. 206
First Reading Copy

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
February 15, 1995

1. Title, lines 5 and 6.
Following: "ABUSE" on line 5
Strike: remainder of line 5 through "WELFARE" on line 6
Insert: "OR NEGLECT"
2. Title, lines 6 through 12.
Following: ";" on line 6
Strike: remainder of line 6 through "HOME;" on line 12
3. Title, line 12.
Strike: "40-8-111," and "41-3-201,"
4. Title, line 13.
Strike: "41-3-204,"
Following: "41-3-205,"
Insert: "AND"
5. Title, lines 13 and 14.
Following: "41-3-206,"
Strike: remainder of line 13 through "41-3-1103," on line 14
6. Page 1, line 18.
Following: "constitutions"
Strike: "; and"
Insert: "."
7. Page 1, lines 19 through 29.
Strike: lines 19 through 29 in their entirety
8. Page 2, line 3 through page 3, line 6.
Strike: section 1 in its entirety
Renumber: subsequent sections
9. Page 3, lines 16 through 21.
Following: "possible" on line 16
Strike: remainder of line 16 through "associate" on line 21
10. Page 4, line 1.
Following: "~~and~~"
Insert: "and"
11. Page 4, lines 1 and 2.
Following: "appropriate" on line 1
Strike: remainder of line 1 through "family" on line 2

12. Page 5, lines 6 through 10.
Strike: subsections (8) and (9) in their entirety
Renumber: subsequent subsections
13. Page 5, line 13.
Following: "(a)"
Strike: "knowingly"
Following: first "or"
Strike: "knowingly"
14. Page 5, line 14.
Following: "(b)"
Strike: "knowingly"
Following: first "or"
Strike: "knowingly"
15. Page 5, lines 16 and 17.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections
16. Page 5, line 28 through page 6, line 3.
Strike: subsections (11) through (13) in their entirety
Renumber: subsequent subsections
17. Page 6, line 20.
Following: "sanitary"
Insert: "or health care"
18. Page 6, lines 20 through 22.
Following: "parent" on line 20
Strike: remainder of line 20 through "parent" on line 22
19. Page 7, line 14.
Strike: "(22)"
Insert: "(17)"
20. Page 7, line 23 through page 9, line 6.
Strike: section 4 in its entirety
Renumber: subsequent sections
21. Page 9, line 11.
Following: "thorough"
Strike: "an initial"
Insert: "a thorough"
22. Page 9, line 18.
Following: "must"
Strike: "within 48 hours"
Following: "develop"
Strike: "independent,"
Following: "corroborative"
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23. Page 9, line 19.
Strike: "attributable"

24. Page 9, lines 19 and 20.

Following: "continue." on line 19

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Following: "If the"

Strike: "child is interviewed by the social worker"

Insert: "child's interview is videotaped"

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Following: "available"

Insert: ", upon request, "

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Following: "and"

Insert: ", upon request, to"

29. Page 10, line 11.

Following: "located"

Strike: ", and the family of the child who is the subject of the report"

30. Page 10, line 13 through page 11, line 9.

Strike: section 6 in its entirety

Renumber: subsequent sections

31. Page 12, line 29.

Following: "member"

Strike: "who believes that the family is being victimized by an unfair or unwarranted process"

32. Page 12, line 30.

Strike: "secret"

Insert: "confidential"

33. Page 13, line 3.

Following: "reporter"

Strike: "has made every effort to avoid publicly identifying"

Insert: "maintains the confidentiality of"

34. Page 13, line 11.

Strike: "under oath"

35. Page 13, line 13.

Strike: "under oath"

36. Page 13, line 19 through page 24, line 12.

Strike: sections 9 through 19 in their entirety

SENATE BILL NO. 206

INTRODUCED BY

Burnett Simpkins
AKLESTAD Benefit Club

GRINDE John

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR ENDANGERMENT OF OR NEGLECT THE CHILD'S WELFARE; PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD REMOVED FROM THE HOME; AND AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-609, AND 41-3-1103, MCA."

WHEREAS, the Legislature finds it necessary to restore public confidence in the child protective system and to provide protection of individual and family civil rights as guaranteed by the state and federal constitutions; and

WHEREAS, present Montana law arguably allows the Department of Family Services to circumvent the constitutional rights of individuals and families; and

WHEREAS, Montana law should require that the burden of proving allegations of child abuse or neglect be on the Department and that those allegations be proved beyond a reasonable doubt, which would reduce the incidence of false charges of alleged abuse, resulting in a corresponding savings to the general fund; and

WHEREAS, there is no room for error in the removal of children from the home, and extreme care must be taken to avoid ruining a family, parent, or individual through government intrusion or mistake; and

WHEREAS, it is necessary to restore the sacred principle of "innocent until proven guilty" to the process of removal of a child from the home in cases of alleged abuse or neglect; and

WHEREAS, child abuse and neglect is a crime and must be addressed as a crime;



1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2

3 ~~Section 1. Section 40-8-111, MCA, is amended to read:~~

4 "40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there
5 have been filed written consents to adoption executed by:

6 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required
7 from a father or mother:

8 (i) adjudged guilty by a court of competent jurisdiction of:

9 (A) assault on the child, as provided in 45-5-201;

10 (B) endangering the welfare of children, concerning the child, as provided in 45-5-622; or

11 (C) sexual abuse of children, toward the child, as provided in 45-5-625;

12 (ii) who has been permanently judicially deprived of the custody of the child on account of cruelty
13 or neglect toward the child;

14 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
15 the child, as ~~defined~~ set forth in 41-3-102~~(3)(d)~~(10)(e);

16 (iv) who has caused the child to be maintained by any public or private children's institution, any
17 charitable agency, or any licensed adoption agency or the department of family services of the state of
18 Montana for a period of 1 year without contributing to the support of the child during ~~said~~ the period, if
19 able;

20 (v) if it is ~~proven~~ proved to the satisfaction of the court that the father or mother, if able, has not
21 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
22 or

23 (vi) whose parental rights have been judicially terminated;

24 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
25 terminated by judicial proceedings and ~~such~~ the guardian has authority by order of the court appointing him
26 the guardian to consent to the adoption;

27 (c) the executive head of an agency if the child has been relinquished for adoption to ~~such~~ the
28 agency or if the rights of the parents have been judicially terminated or if both parents are dead and
29 custody of the child has been legally vested in ~~such~~ the agency with authority to consent to adoption of
30 ~~the child, or~~

1 ~~(d) any person having legal custody of a child by court order if the parental rights of the parents~~
 2 have been judicially terminated, but in such case the court having jurisdiction of the custody of the child
 3 ~~must~~ shall consent to adoption, and a certified copy of its order shall ~~must~~ be attached to the petition.

4 (2) The consents required by subsections (1)(a) and (1)(b) shall ~~must~~ be acknowledged before an
 5 officer authorized to take acknowledgments or witnessed by a representative of the department, of family
 6 ~~services or of an agency, or witnessed by a representative of the court.~~

7
 8 Section 2. Section 41-3-101, MCA, is amended to read:

9 "41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana
 10 to:

11 (a) ~~insure~~ ensure that all youth are afforded an adequate physical and emotional environment to
 12 promote normal development;

13 (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty
 14 owed to the youth;

15 (c) achieve these purposes in a family environment whenever possible; and

16 (d) preserve the unity and welfare of the family whenever possible ~~and provide legal redress for~~
 17 ~~the unlawful interference with the family's right to remain intact; and~~

18 ~~(e) ensure that there is no forced removal of a child from the family because of suspected abuse,~~
 19 ~~or endangerment of the child's welfare by an immediate family member or family associate without the filing~~
 20 ~~of a criminal complaint charging abuse or endangerment against that immediate family member or family~~
 21 ~~associate.~~

22 (2) It is the policy of this state to:

23 (a) protect, whenever possible, family unity;

24 (b) provide for the protection of children whose health and welfare are or may be adversely
 25 affected and further threatened by the conduct of those responsible for their care and protection; and

26 (c) ensure that whenever removal of a child from the home is necessary, the child is entitled to
 27 maintain ethnic, cultural, and religious heritage free from proselytism.

28 (3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by
 29 professional people and other community members to the appropriate authority will cause the protective
 30 services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

1 ^{and} and preserve family life ~~wherever whenever appropriate and provide legal redress to interference with the~~
 2 ~~family.~~"

3
 4 Section ²~~1~~ Section 41-3-102, MCA, is amended to read:

5 "41-3-102. Definitions. As used in this chapter, the following definitions apply:

6 (1) "A person responsible for a child's welfare" means:

7 (a) the child's parent, guardian, or foster parent;

8 (b) a staff person providing care in a day-care facility;

9 (c) an employee of a public or private residential institution, facility, home, or agency; or

10 (d) any other person legally responsible for the child's welfare in a residential setting.

11 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
 12 or neglect.

13 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
 14 of medically indicated treatment or medically indicated psychological care permitted or authorized under
 15 state law.

16 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
 17 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
 18 child. However, ~~nothing in this chapter may not~~ be construed to limit the administrative or judicial authority
 19 of the state to ensure that medical care is provided to the child when there is imminent or substantial risk
 20 of harm to the child.

21 (4) "Child" or "youth" means any person under 18 years of age.

22 (5) (a) "Child abuse or neglect" means:

23 (i) harm to a child's health or welfare, ~~as defined in subsection (8); or~~

24 (ii) threatened harm to a child's health or welfare, ~~as defined in subsection (15).~~

25 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
 26 omissions of a person responsible for the child's welfare.

27 (6) "Department" means the department of family services provided for in 2-15-2401.

28 (7) "Dependent youth" means a youth:

29 (a) who is abandoned;

30 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

- (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;
- (d) who is destitute;
- (e) who is dependent upon the public for support; or
- (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

~~(8) "Family" means at least one natural or adoptive parent or legal guardian with at least one minor child.~~

~~(9) "Family associate" means a person who may or may not live within the household of a child, who is or has been granted unencumbered access to the child by a natural or adoptive parent, stepparent or legal guardian of the child.~~

(8) ~~(8)(10)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

- (a) ~~knowingly~~ inflicts or ~~knowingly~~ allows to be inflicted upon the child physical or mental injury;
- (b) ~~knowingly~~ commits or ~~knowingly~~ allows to be committed sexual abuse or exploitation of the child;

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

(c) ~~(c)(d)~~ causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) ~~(d)(e)~~ abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or ~~by~~ willfully ~~surrendering~~ surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) ~~(e)(f)~~ is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

~~(11) "Immediate family member" means a parent, guardian, or natural relative of a child and includes the natural grandparent of the child.~~

~~(12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required~~

~~located for the child's own sanitary requirements and who is not beyond the age when a reasonable person would expect physical skills and training to be complete.~~

~~(13) knowingly has the meanings provided in 45-2-101.~~

(9) ~~(9)(14)~~ "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(10) ~~(10)(15)~~ "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(11) ~~(11)(16)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) ~~(12)(17)~~ "Proselytism" means the change or attempted change through undue influence of the religious beliefs or affiliation of a child who has been removed from the family to a religion other than that affiliated with the child's race, culture, or heritage by an adult, other than a family member, in a position of power over the child or by constant exposure of the child to dogma, tradition, or religious teachings and practices preferred by the adult.

(13) ~~(13)(18)~~ (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area *or health care* while attending to the sanitary needs of that infant or toddler by a parent ~~or any acts that would otherwise be considered by a reasonable person to be a comforting of the infant or toddler by a concerned or loving parent.~~

(14) ~~(14)(19)~~ "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(15) ~~(15)(20)~~ "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.

(16) ~~(16)(21)~~ "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(17) ~~(17)(22)~~ (a) "Withholding of medically indicated treatment" means the failure to respond to an

1 infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and
2 medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
3 to be effective in ameliorating or correcting the conditions. ~~However, the~~

4 (b) The term does not include the failure to provide treatment (other than appropriate nutrition,
5 hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical
6 judgment:

7 ~~(a)~~(i) the infant is chronically and irreversibly comatose;

8 ~~(b)~~(ii) the provision of treatment would:

9 ~~(i)~~(A) merely prolong dying;

10 ~~(ii)~~(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions;

11 or

12 ~~(iii)~~(C) otherwise be futile in terms of the survival of the infant; or

13 ~~(e)~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and
14 the treatment itself under the circumstances would be inhumane. For purposes of this subsection ¹⁷~~(22)~~,
15 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been
16 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term
17 disability. The reference to less than 1 year of age may not be construed to imply that treatment should
18 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing
19 protections available under state laws regarding medical neglect of children over 1 year of age.

20 ⁽¹⁸⁾ ~~(17)~~(23) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined
21 in this section."

22
23 ~~Section 4. Section 41-3-201, MCA, is amended to read:~~

24 "41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have
25 reasonable cause to suspect, as a result of information that they receive in their professional or official
26 capacity, that a child is abused or neglected, they shall report the matter promptly to the department of
27 family services or its local affiliate, which then shall notify the county attorney of the county where the
28 child resides.

29 (2) Professionals and officials required to report are:

30 ~~(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,~~

1 ~~examination, care, or treatment of persons;~~

2 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist,
3 or any other health or mental health professional;

4 (c) ~~Christian Science practitioner~~ practitioners and religious healers;

5 (d) school teachers, other school officials, and employees who work during regular school hours;

6 (e) a social worker, operator, or employee of any registered or licensed day-care or substitute care
7 facility; or any other operator or employee of a child-care facility;

8 (f) a foster care, residential, or institutional worker;

9 (g) a peace officer or other law enforcement official; or

10 (h) a member of the clergy.

11 (3) Any person may make a report under this section if ~~he~~ the person knows or has reasonable
12 cause to suspect that a child is abused or neglected.

13 (4) (a) Except as provided in subsection (4)(b) or (4)(c), ~~a~~ person listed in subsection (2) may not
14 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

15 (b) A ~~clergy person~~ member of the clergy or a priest is not required to make a report under this
16 section if:

17 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made
18 to the ~~clergy person~~ member of the clergy or the priest in ~~his~~ that person's capacity as a ~~clergy person~~
19 member of the clergy or a priest;

20 (ii) the statement was intended to be a part of a confidential communication between the
21 ~~clergy person~~ member of the clergy or the priest and a member of ~~his~~ the church or congregation; and

22 (iii) the person who made the statement or confession does not consent to the disclosure by the
23 ~~clergy person~~ member of the clergy or the priest.

24 (c) A ~~clergy person~~ member of the clergy or a priest is not required to make a report under this
25 section if the communication is required to be confidential by canon law, church doctrine, or established
26 church practice.

27 (5) The reports referred to under this section ~~shall~~ must be made under oath and must contain:

28 (a) the names and addresses of the child and ~~his or her~~ the child's parents or other persons
29 responsible for ~~his or her~~ the child's care;

30 ~~(b) to the extent known, the child's age, and the nature and extent of the child's injuries, including~~



1 ~~any evidence of previous injuries,~~
2 (c) any other information that the maker of the report believes might be helpful in establishing the
3 cause of the injuries or showing the willful neglect and the identity of the person or persons responsible
4 therefor for the injuries or neglect; and
5 (d) the facts ~~which that~~ led the person reporting to believe testify under oath that the child has
6 ~~suffered injury or injuries or willful neglect, within the meaning of this chapter.~~

3

8 Section ~~b~~. Section 41-3-202, MCA, is amended to read:

9 "41-3-202. Action on reporting. (1) Upon receipt of a report, as required by 41-3-201, that a child
10 is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly
11 conduct ~~a thorough~~ ^{a thorough} ~~an initial~~ investigation into the home of the child involved or any other place where the
12 child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial
13 matters ~~which that~~ in the discretion of the investigator are relevant to the investigation. In conducting an
14 investigation under this section, a social worker may not inquire into the financial status of the child's
15 family or of any other person responsible for the child's care, except as necessary to ascertain eligibility
16 for federal assistance programs or to comply with the provisions of 41-3-406.

17 (2) An initial investigation into the home of the child may be conducted when an anonymous report
18 is received. However, the investigation must ~~within 48 hours~~ develop independent corroborative, and
19 attributable information in order for the investigation to continue. ~~Without the development of independent~~
20 ~~corroborative and attributable information, a child may not be removed from the home.~~

21 ~~(2)(3)~~ (3) The social worker is responsible for assessing the family and planning for the child. If the
22 child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent
23 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and
24 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records
25 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer
26 conducting an interview of the child, an employee of the public school attended by the child involved may
27 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

28 ~~(4) All examinations of the child must be attended by the independent examining psychologist or~~
29 ~~physician representing the family and by the social worker.~~ ^{child's interview is videotaped}
30 an unedited videotape with audio track must be made available, for unencumbered review by the family.

, upon request, 

1 ~~(3)~~(5) If from the investigation it appears that the child suffered abuse or neglect, the department
2 shall provide protective services to the child pursuant to 41-3-301 and may provide protective services to
3 any other child under the same care. The department ~~will~~ shall advise the county attorney and the child's
4 family of its investigation.

5 ~~(4)~~(6) The investigating social worker, within 60 days of commencing an investigation, shall also
6 furnish a written report to the department and ^{, upon request, to} the family. The department shall maintain a record system
7 containing child abuse and neglect cases.

8 ~~(5)~~(7) Any person reporting abuse or neglect which ~~that~~ involves acts or omissions on the part of
9 a public or private residential institution, home, facility, or agency shall be is responsible for ensuring that
10 the report is made to the department of family services, its local affiliate, and the county attorney of the
11 county in which the facility is located ~~and the family of the child who is the subject of the report.~~

12
13 ~~Section 6. Section 41-3-204, MCA, is amended to read:~~

14 "41-3-204. Admissibility and preservation of evidence. (1) In any a proceeding resulting from a
15 report made pursuant to the provisions of this chapter or in any a proceeding where in which the report or
16 its contents are sought to be introduced into evidence, the report or its contents or any other fact related
17 to the report or to the condition of the child who is the subject of the report shall may not be excluded on
18 the ground that the matter is or may be the subject of a privilege related to the examination or treatment
19 of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by
20 26-1-803.

21 (2) Any A person or official required to report under 41-3-201 may take or cause to be taken
22 photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs
23 taken under this section shall must be paid by the department.

24 (3) When any a person required to report under 41-3-201 finds visible evidence that a child has
25 suffered abuse or neglect, he the person must shall include in his the report either a written description of
26 photographs of the evidence.

27 (4) A physician, either in the course of his providing medical care to a minor or after consultation
28 with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be
29 taken when in his the physician's professional opinion, there is a need for radiological evidence of
30 suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent

~~of guardian. The cost of the x-rays ordered and taken under this section shall must be paid by the county child protective service agency.~~

~~(5) Evidence collected in the questioning of a child by an investigator without the presence of a videotape with audio track is inadmissible in a court to support a motion to temporarily remove the child from the family, grant temporary custody, or terminate parental rights.~~

~~(5)(6) All At the time that the written confirmation report is sent or as soon after the report is sent as possible, all written, photographic, or radiological evidence gathered under this section shall must be sent to the local affiliate of the department and copies must be sent to the child's family at the time the written confirmation report is sent or as soon thereafter as is possible.~~

~~4~~
Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential, except as provided by this section. ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, ~~or~~ guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with disclosure

1 of the identity of any person who reported or provided information on the alleged child abuse or neglect
2 incident contained in the records;

3 (e) a child named in the records who was allegedly abused or neglected or the child's guardian ad
4 litem;

5 (f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the
6 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
7 plan;

8 (g) a department or agency investigating an applicant for a license to operate a youth care facility,
9 day-care facility, or child-placing agency if the investigation is based on a substantiated report and the
10 applicant is notified of the investigation;

11 (h) an employee of the department if disclosure of the records is necessary for administration of
12 programs designed to benefit the child;

13 (i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
14 necessary to meet requirements of the federal Indian Child Welfare Act;

15 (j) a youth probation officer who is working in an official capacity with the child who is the subject
16 of a report in the records;

17 (k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution
18 of a case involving child abuse or neglect;

19 (l) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen
20 review board established under Title 41, chapter 3, part 10;

21 (m) a school employee participating in an interview of a child by a social worker, county attorney,
22 or peace officer as provided in 41-3-202;

23 (n) a member of a county interdisciplinary child information team formed under 52-2-211 who is
24 not listed in subsection (3); or

25 (o) members of a local interagency staffing group provided for in 52-2-203.

26 (4) A person who is authorized to receive records under this section shall maintain the
27 confidentiality of the records and may not disclose information in the records to anyone other than the
28 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family
29 member who believes that the family is being victimized by an unfair or unwarranted process to keep the
30 proceedings confidential.

1 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
2 reporting facts or statements made by an immediate family member under subsection (4) if the news
3 organization, employee, writer, or reporter *maintains the confidentiality of* ~~has made every effort to avoid publicly identifying~~ the child who
4 is the subject of the proceeding.

5 ~~(5)(6)~~ (6) ~~Nothing in this~~ This section is not intended to affect the confidentiality of criminal court
6 records or records of law enforcement agencies."

7 **5**
8 Section ~~8~~ **5**. Section 41-3-206, MCA, is amended to read:

9 "41-3-206. Procedure in case of child's death. (1) ~~Any~~ A person or official required to report by
10 law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall
11 report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law enforcement officer.
12 Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or
13 neglect may report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law
14 enforcement officer.

15 (2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing,
16 to the local law enforcement agency, the appropriate county attorney, the local child protective service,
17 the family of the deceased child, and, if the person making the report is a physician, the physician."

18
19 ~~Section 9. Section 41-3-301, MCA, is amended to read:~~

20 "41-3-301. Emergency protective service. (1) ~~Any~~ A child protective social worker of the
21 department of family services, a peace officer, or the county attorney who has reason to believe that any
22 a youth is in immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ the
23 youth in a protective facility. The department may make a request for further assistance from the law
24 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify
25 the parents, parent, guardian, or other person having legal custody of the youth at the time the placement
26 is made or as soon thereafter ~~after placement~~ after placement as possible.

27 (2) ~~No~~ A child who has been removed from ~~his~~ the home or any other place for ~~his~~ the child's
28 protection or care may not be placed in a jail.

29 (3) A petition shall must be filed pursuant to 41-3-401 within 48 hours of emergency placement
30 ~~of a child unless arrangements acceptable to the agency for the care of the child have been made by the~~

~~parents. Criminal charges must be filed against a family member or family associate believed by a county attorney, the attorney general, or an attorney hired by the department to have abused or endangered a child. A family member or family associate charged with abuse or endangerment is entitled to a jury trial.~~

~~(4) If criminal charges are not filed within 20 days of emergency placement, the child must be returned to the home unless clear and convincing evidence exists to support an allegation that the child, if returned to the home, is in imminent danger of being abused or endangered by a family member or family associate. If evidence of imminent danger exists, the child may be removed from the home only for a period of time sufficient to allow the development of the required criminal complaint. In all cases, an emergency placement of a child may not continue beyond 60 days without criminal charges being filed against the person believed to have abused or endangered the child.~~

~~(4)(5) The department of family services shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."~~

Section 10. Section 41-3-303, MCA, is amended to read:

~~"41-3-303. Guardian ad litem. (1) In When a child is temporarily removed from the home and in every judicial proceeding, the court shall appoint for any a child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary the The guardian ad litem may must be a person chosen from a roll of volunteers who have undergone a background check and who have parental experience. They may serve either at their own expense or at public expense.~~

~~(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:~~

~~(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;~~

~~(b) to interview or and observe the child who is the subject of the proceeding;~~

~~(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians legal guardian;~~

~~(d) to make written reports to the court concerning the child's welfare;~~

~~(e) to appear and participate in all proceedings to the degree necessary to adequately represent~~

~~child, testify regarding the guardian ad litem's observation of the child's needs and emotional state and~~

place. This would just take everything forward from that point in time.

Closing by Sponsor:

SEN. GROSFIELD described the genesis of the bill and the difference between this bill and one in Wyoming after which it is modeled.

HEARING ON HB 206

Opening Statement by Sponsor:

SEN. "JIM" BURNETT, SD 12, submitted a list of names he had gathered over the last four years. These names were of those who had had problems with the Department of Family Services (DFS) in how they operated. EXHIBIT 1 He asked the committee to ignore the bill which had come out of the Senate and asked that the committee act on the original bill. EXHIBIT 2 He presented his opening remarks to the committee. EXHIBIT 3 Then he took the committee through the bill. He provided the committee with the minutes of the hearing in the Senate Judiciary Committee. EXHIBIT 4

{Tape: 1; Side: B; Approximate Counter: 12.4.}

Proponents' Testimony:

Kenneth Haugen, Missoula, Family for Families, said he had personal knowledge of the difficulties families had had with the methods used by DFS in removing children from homes and termination of parental rights based on unsubstantiated allegations. He said that people in the group he has organized had not received help from the director of DFS and had talked to the Governor and had not received satisfaction in their complaints. He gave examples of parents' experiences within the group. He said that parents are treated as if they are guilty until proven innocent.

CHAIRMAN CLARK relinquished the chair to VICE CHAIR SHIELL ANDERSON.

Hank Hudson, Director, DFS, originally came as a proponent of the amended version and said he was not a proponent of the original version of the bill. He made a general statement that the department is aware of how serious and how far reaching the decisions are which they make. He said that he deals daily with cases half of which involve people who are outraged because DFS is not removing children and the other half outraged that they are. Everything the department does is highly emotional, he claimed, and that they had done everything possible to balance the rights of citizens to be left alone by the government with the responsibility of the state to protect children. He listed

the department's actions over the last two years to strike that balance. He said they would not "buy into an idea that's going to end up with children being hurt."

Two provisions in the original bill had been opposed in the Senate hearing by several opponents. These opponents were not present in this hearing because the amended bill was thought to be the one under consideration according to Mr. Hudson. He described the actions the department has been taking to keep families together and said that if it is moved into the criminal arena, everything they had done would be lost. He said that before anyone's parental rights are terminated they have been investigated by a social worker, regional administrator, supervisor and the director of the department with the agreement of a county attorney, a judge and a guardian ad litem who represents a child and the family can have an attorney. There is also a citizen foster review committee which is involved in the decision process. He said that those he listed were not DFS employees and provide the checks and balances in the process and demand proof of the grounds for termination of parental rights.

He said that there was a group being formed for the purpose of making the argument that the criminal system would never be able to protect young children from sexual molestation. He said they had worked with the Senate to find those things which were possible and reiterated that he had come to testify as a proponent of the Senate's amended version of the bill and not on the original bill. He defended the department's actions from the allegation that children are removed for unsubstantiated reasons and suggested that those making the accusations were not telling the whole story which is demonstrated in the files which prove the documentation of reasonable cause for the termination of parental rights. He said the confidentiality of those files is maintained to protect the children.

VICE CHAIR ANDERSON clarified that the committee was considering the blue bill as it came from the Senate and that the white copy was used only for reference in the opening sponsor's testimony.

Larry Lekse appeared as a parent who said DFS had removed his child. He described the situation and the unresponsiveness to his requests concerning his daughter. He asked the committee to consider the bill in its original form.

{Tape: 1; Side: B; Approx. Counter: 33.1}

REP. LARRY GRINDE, HD 94, appeared as a proponent and related incidents in his own community and how it reflected on the practices of DFS. He said that in his community the decisions were not coming down on the side of the child. He felt the bill which had come out of the Senate needed some changing, but did not know if it should be returned to its original form. He said there was a need in the bill for some recourse for the parents who had lost their children.

He also addressed the hiring process and qualifications for the social workers. He believed that education should not be the only criteria for hiring, but that there needed to be background checks on candidates for those positions. He said the case workers should not be given the degree of authority they have in family matters without a thorough background check. He also suggested moving the case workers on a regular basis to circumvent undue influences from the familiarity of the community.

CHAIRMAN CLARK resumed the chair.

REP. BRAD MOLNAR, HD 22, rose in support of SB 206. He presented a form letter to the committee which he had discovered was given to parents claiming that they had been found to have substantiated claims against them in abuse or neglect. He discussed the elements of abuse in spanking a child as determined by the department. He said the letter had been wrongfully used in divorce cases in custody disputes.

Further, he discussed the interpretation of abuse from skin discoloration which lasted more than two days. He said there were instances where the parents may have had to use some force in dealing with an older child for their own protection; i.e., a child drunk from whom the keys to the car need to be taken or a child who needed to be restrained to take medicines prescribed for their own health. He said that in those cases the child or the neighbor may be asked where the bruise came from, but the parent will not be asked but then are found guilty of abuse and placed under investigation.

Mike Billedeaux, Blackfeet Indian Nation, described his personal case where he was charged with child abuse and was denied access to his children or even information about their whereabouts. He said he was denied justice in the case and for three years he had been unable to prove his case because he was never charged but had capitulated so that his wife could regain custody.

Karen Kowalczyk presented written testimony. She also cited the DFS policy manual which said their mission was to protect children and adults by supporting community and family strengths and said just the opposite was being done. She quoted the manual regarding removal and placement of children and said that in their case, the investigative actions were contrary to the stated policy. EXHIBIT 5

REP. GRINDE reflected on items he felt the committee should consider in deliberations on the bill. One item had to do with proper investigation of telephone complaints. The other item had to do with immunity for the case workers. He explained his concern and suggested that the complete immunity they currently have prevented the more responsible and complete investigation that is needed.

Informational Testimony:

Laurie Koutnik, Executive Director, Christian Coalition, said she was neither an opponent or proponent of SB 206. She had come to be a proponent of the Senate version though she had concerns about the rewritten version. She presented her testimony as given in the Senate which was in opposition to the original bill.

{Tape: 2; Side: A}

She was concerned that some of the proposed changes would exacerbate the problem with the shortage of foster care families. On page 3, line 24, section (1)(c), she pointed out one of the difficulties in restricting the foster parents from exposing the foster child to their faith. She was also concerned about the proposal to move the social workers from time to time and felt this would have a chilling effect on qualified people entering or staying in that field. She recounted her personal testimony of having been accused of abuse and the way she was fairly treated by DFS and that the system works with DFS personnel doing their job.

She said the original bill was poorly written because of the mixing of civil and criminal penalties, the inclusion of video cameras for investigative purposes and the provisions dealing with confidentiality. She said she could not wholeheartedly support the Senate amended version either and asked the committee to proceed carefully in their deliberations.

{Tape: 2; Side: A; Approx. Counter: 17.6.}

EXHIBITS 8 through 12 are letters supporting passage of SB 206 in its original form.

EXHIBITS 13 and 14 are letters in support of SB 206.

Opponents' Testimony:

Mary Alice Cook, Advocate for Montana's Children, cited the volatility of teens and their ability to manipulate to get what they want. She felt that the children can use the system to get what they want. She also knew from her experience that there are children who are truly abused. She said that a hearing in another committee haunted her where a group of teens between the ages of 10 and 15 gave testimony revealing the list of sexual crimes they had committed and testified of the sexual abuse they had endured. She was concerned about the perpetuation of the crimes in the society. She said this bill would strip the children of protection and urged a vote of SB 206 in its original form.

Robert Torres, Montana Chapter of National Association of Social Workers, reluctantly rose in opposition to the bill as presented

and would have preferred to have stood in favor of the bill as amended by the Senate. EXHIBIT 6 summarized his comments.

Alan Cranford, Christian Science Churches of Montana, was concerned about the protection of religious rights and suggested amendments to the bill to preserve this right. EXHIBIT 7

{Tape: 2; Side: A; Approx. Counter: 43.9}

Questions From Committee Members and Responses:

REP. BILL TASH asked the sponsor to discuss the Senate amendments to the original bill.

SEN. BURNETT said he was not present at the time of executive action and felt they had "stripped the bill very badly" and he did not know the rationale behind some of the amendments.

CHAIRMAN CLARK relinquished the chair to VICE CHAIR WYATT who clarified that the committee was considering the bill as amended by the Senate.

REP. SOFT asked if there was a consensus of opinion of REPS. GRINDE and SIMPKINS on the bill in its original form.

SEN. BURNETT answered that the original bill before it was drafted for presentation was supported. He discussed the theory behind the meetings which were held in preparing the bill for drafting.

REP. SOFT referred to testimony that proper procedures are not in place upon the hiring and screening of social workers in the field. He asked what steps and procedures are taken by DFS.

Ann Gilke, Attorney, DFS, outlined those steps and procedures. She said the education and experience requirements are a Bachelor's Degree in Social Science or a related field with a year's experience in social work or related field. Reference checks are done on the top applicants; criminal background checks are not currently being done.

REP. SOFT requested that Ms. Gilke address the allegation that parents have no recourse and receive no communication when they lose their parental rights.

Ms. Gilke described the internal departmental checks and balances in investigation of every referral of alleged child abuse. Upon investigation if the social worker believes that the abuse or neglect is substantiated, the parent is notified that the investigation has taken place and that the charge was substantiated and that they have the ability to appeal the decision. She further outlined the process if an appeal is upheld or denied involving the county attorney and a judge. She said that the cases are reviewed on an ongoing basis.

REP. SOFT stated that testimony had been given to the committee that the foster care review committees were not working and communication was not complete with them. He asked for her opinion about the effectiveness of the foster care review committee system.

Ms. Gilke said she did not have much direct information about them, but did know how they were supposed to work and was aware of the pilot program for a citizen review board which was being studied as an alternative. She felt that in many areas the current system worked well.

REP. SOFT asked why major sections of original language had been amended out from section 10 to the end of the bill.

Ms. Gilke said that in respect to 41-2-302, MCA, it took those sections and that reference in the title out of the bill while the existing law would remain on the books.

REP. MC GEE referred to previous testimony about what is in statute regarding abuse and neglect versus what is in department rules. He asked if spanking a child which would leave a red mark on the buttocks was considered child abuse.

Ms. Gilke quoted that the law stated, "permanent or temporary disfigurement of a child due to excessive corporal punishment is physical abuse." She said spanking is legal in Montana, but they cannot be temporarily disfigured; i.e., a red mark that is still visible after two or three days, might be considered excessive corporal punishment. If a child were accidentally injured in the attempt to protect it, that would not be child abuse.

{Tape: 2; Side: B}

REP. MC GEE asked what the obligation was of a third party who would see the red marks on the buttocks of a child.

Ms. Gilke said there was a mandatory reporting requirement of someone in an official capacity such as a teacher, swim instructor, etc. They would not be required to report in a social setting, but as a concerned citizen they could report suspected child abuse.

REP. MC GEE requested a summary of the process if the person does report it and Ms. Gilke provided the information.

REP. MC GEE asked if the social worker would make an appointment to go to the home of the child to investigate the alleged abuse.

Ms. Gilke answered that in the case of a young child, that would be the case; where in the case of an older school-aged child, the social worker frequently would go to the school to interview the child often without the parent. She said the parent is notified.

REP. MC GEE refuted the statement that the parent is notified. He asked if in the case of the younger child a social worker would, upon examining the child, make an adjudication whether the child had been abused.

Ms. Gilke replied that was correct.

REP. MC GEE asked if that concluded their investigation.

Ms. Gilke said if there was an obvious large bruise after a length of time and they decided abuse had occurred, by policy they would have to notify the parent in writing that they had substantiated physical abuse.

REP. MC GEE asked what the term, "substantiated," meant.

Ms. Gilke answered, "The term, 'substantiated,' means that the social worker has determined that physical abuse of that child occurred."

REP. MC GEE repeated, "The social worker has determined that."

Ms. Gilke answered that was correct.

REP. MC GEE asked where there was a check or a balance for substantiation in what she had just described. He also asked what the difference was between determination and substantiation.

Ms. Gilke said the substantiation and the determination would be that the worker believed that the child had been physically abused by the care giver. The check and balance would come once the parent was notified and given the opportunity to appeal the determination through the review process which she had previously outlined.

REP. MC GEE said she was saying to the committee that a person, possibly with prejudice, could come into a person's home, make a determination, call it substantiation..... He asked when the child is withdrawn from the home and if it occurred at the point of that determination/substantiation.

Ms. Gilke said the child would be removed when it was at imminent risk of substantial harm. She said a spanking which resulted in a mark was not usually a reason for a child to be removed.

REP. MC GEE asked who determined when a child was at substantial risk.

Ms. Gilke answered, "The social worker."

REP. MC GEE said she was telling the committee that a social worker can walk in, make a determination that there has been physical abuse, substantiate his own determination and then determine that there is potential for further harm and take the

child. He asked her to explain to the committee what the due process is at that point before the child is removed from the home.

Ms. Gilke answered that in any removal a supervisor would have to okay it. The social worker would have to obtain that approval before they could remove the child. A child could not be removed for any longer than 48 hours without a petition filed by a county attorney and a judge sanctioning the action.

REP. MC GEE asked when the supervisor would give the approval, before or after the fact.

Ms. Gilke said each case was unique. They try to get the supervisor involved in any removal but if it is a very severe case, the worker might have to take action immediately and then get the sanction later, but typically that is not the case.

REP. MC GEE asked Mrs. Koutnik if the person who reported the allegation against her was known by her.

Mrs. Koutnik said she did know the person.

REP. MC GEE asked if this was standard operating procedure on the part of social workers to call the accused parent in advance of the investigation.

Mrs. Koutnik said the child had conveyed the allegation to a youth group leader, a private counselor who was bound to report, and it was the youth group leader who called.

REP. MC GEE asked if the youth group leader was bound by law to call the parent.

Mrs. Koutnik answered, "No."

REP. MC GEE asked if the reason she called was because she knew Mrs. Koutnik.

Mrs. Koutnik answered, "Yes, because she was concerned....."

REP. MC GEE asked if this was not a unique situation.

Mrs. Koutnik said the youth leader was not bound by standing operating procedures of DFS, and believed she called because she knew her and because she was concerned and wanted her to know it was being reported. She said the department did call her husband to say there had been a report and that they were going to interview the child.

REP. MC GEE asked if those people had never known her, did she believe they would have received a phone call prior to receiving a form letter announcing the allegations and investigation.

Mrs. Koutnik said they probably wouldn't have.

REP. MC GEE stated that approximately 15 pages of the original 24-page bill had been stricken and asked the sponsor if the committee were to have the option of amending everything back in the original bill or acting upon the (blue) amended copy, would he prefer the amended copy be passed or killed.

SEN. BURNETT said it was his opinion and desire that the committee consider the original copy and amend that to something this committee could accept.

REP. MC GEE asked if they couldn't amend, did he want the blue copy killed.

SEN. BURNETT said he did not want that because it did contain some provisions they wanted.

REP. MC GEE asked Mr. Torres about the qualifications for a social worker and asked if he could explain what a year's experience meant to DFS.

Mr. Torres said he could not answer that question. He understood that they preferred that a person had a year's experience in child protective services.

Richard Kerstein, Administrator, Field Services Division, DFS, clarified the qualifications of a field social worker.

REP. MC GEE asked if he had said that one degree that might be considered was education and Mr. Kerstein said it was correct.

REP. MC GEE asked if an elementary education degree would qualify.

Mr. Kerstein said it would if there were no other applicants for a particular position and the applicant had experience in a related field preferably other than only classroom teaching.

REP. MC GEE asked how a person acquired the experience in child protective services.

Mr. Kerstein said it would hopefully be in a social services agency or perhaps in residential treatment or in a mental health center.

REP. MC GEE asked him to speak from his experience as a field worker, when he walked into a home that looked abusive, what in his mind constituted substantiation.

Mr. Kerstein discussed the extended training a social worker would have prior to field work which would involve policy and law and standards for determining whether a child was in imminent risk.

REP. MC GEE expressed a great concern that DFS had moved in a direction in which, at all expense and almost at any cost to protect the child as interpreted by somebody, was resulting in the child being taken from the home without due process. He said that no matter who he had asked, he had not been given an answer of what substantiated was even though that was the basis upon which a child is taken from the family. He asked if Mr. Hudson sensed that there was some additional action which DFS must take to restore the balance.

Mr. Hudson replied that one part of the equation which had not been discussed was common sense. He said the people who work for the department basically know the difference between spanking a child and child abuse. In his experience of two years and handling hundreds of cases, there had only been one spanking case which involved the use of a metal tent pole. He said he did not see the workers get involved in issues which defied common sense.

He said he would be shaken if he did not know that the full process had been administered which included the checks and balances in persons involved outside of the department in making the decisions to remove children. He said they constantly deal with the issues swinging between rights to be left alone and the need to protect children and the timing of taking action. He was concerned about the pendulum swinging too far in either direction and he said he thought the original bill was too big a swing leaving kids in danger. He felt they were moving toward spending more effort with the birth families and leaving them in homes. He said the community standards were reflected in the behavior of county attorneys, judges, and mental health officials. He said Montanans were not very tolerant in their communities and judges are quick to remove children because the community standard in Montana is, "you don't hurt children."

REP. MC GEE said though he supported what DFS was trying to do, he felt that what occurs in the field reflected the pendulum swinging too far and that there needed to be more of a move toward due process. He was concerned about the system operating as if the parent was guilty until proven innocent.

REP. DUANE GRIMES asked about the issue on page 3 concerned with proselytizing and asked why that was included and if the provision in the bill would prevent a foster parent from taking a child to church with them.

SEN. BURNETT said the intent was to prevent someone from being persuaded away from the faith of their birth family.

REP. GRIMES asked if the provision created a problem in placing kids in foster homes and asked what considerations the department had in that issue particularly with Native American children.

Mr. Hudson said they have a policy which would prohibit children placed in a foster home from being under undue influence to

change their beliefs. The issue most often seen by him is Native American children having to have hair cuts. He said the sentence did not bring an objection from the department because they did not want children to lose their culture or heritage. He felt that using the word, "proselytizing," was not necessary.

{Tape: 2; Side: B; Approx. Counter: 38.9}

REP. TASH discussed the reasonable cause provision and his concern that the determiner of reasonable cause would be DFS. He asked what rationale was used when it was amended out along with some of the other provisions dealing with due process and recourse.

Ms. Gilke discussed the substantive changes in the sections of the original bill and the rationale behind them.

REP. TASH asked if she would agree that there should be some attempt at the validity of the reasonable cause report order and asked if she had any recommendations or thoughts about how to guarantee the credibility of someone reporting child abuse.

Ms. Gilke said that produced a struggle because it is rare that vindictive or invalid referrals are made. She said that it was hard to define when a suspected abuse should be reported, but when one is reported DFS has to investigate and in that process they are all "washed out." She felt it was important to require the initial call so that a professional could investigate to make the determination.

REP. CURTISS asked about the record keeping process for DFS in making recommendations to a judge. She wondered about the keeping of the files for backup of their recommendation to the judge.

Ms. Gilke spoke of the forms, statutes and procedures and could not answer the question pertaining to specific judges not receiving the backup information.

REP. WYATT asked if it was correct that there were over 2,000 children taken by DFS.

Mr. Hudson said there were around that number of children currently in out-of-home placement.

REP. WYATT asked if the process had been properly followed in their placement.

Mr. Hudson said that the only variable would be a voluntary agreement to foster care placement while the parent obtained treatment.

REP. WYATT asked if it was true that a case involving DFS had never been lost.

Mr. Hudson said they lost regularly though they win in most of the cases and he discussed that judges frequently disagreed with them and the judge-appointed foster care review committees disagree with them. He said that if judges are dissatisfied with the review committee's recommendations, they can remedy that. He said that it may be a reflection of the workload that judges have that they often prefer to agree with the committee's recommendations rather than scrutinize the case intently.

REP. WYATT was concerned about video taping and confronting young girls who are alleged to be in sexual assault situations. She asked him to address that if it went back to the original language of the bill.

Mr. Hudson said the issue of video taping in the original bill or involving other people in an interview was difficult. He said their goal was to limit the numbers of times they would be interviewed while providing the elements of developing a fair case.

REP. SOFT expressed his concern about the social workers not following clearly defined operating procedures in dealing with the investigations.

Mr. Hudson said that there are policies, practices and law in which the workers are trained. He agreed that the application of those can't vary depending on each county or worker, but they needed uniformity.

REP. SOFT had a concern about the hiring criteria for social workers and asked about hiring people who may not meet the standards.

Mr. Hudson said they were limited by the amount of money they have to spend in hiring qualified people. They design the applications to attract a large enough pool of people to hire the best person they can with at least bottom line qualifications.

REP. SOFT asked if there was a standard of excellence below which they cannot go.

Mr. Hudson said there was. He said the policy was that if there was no one qualified to do the job, they don't hire.

REP. SOFT voiced concern about the immunity provision of the bill.

Mr. Hudson said that if a social worker operates outside the policy and violates the policy, they are liable. If they operate inside the policy and job description, people still sue the department and the department is liable. They receive the same immunity that legislators receive, he said, in doing the job they have been hired to do.

REP. LINDA MC CULLOCH asked about the concept of moving social workers around.

Mr. Hudson said he did not support that option. He said if someone was not doing their job, they need to be terminated. The department would have trouble recruiting people if they knew they might be asked to move at any time.

{Tape: 3; Side: A}

He said he did not want to make them aliens working in foreign communities but rather to be part of the fabric of the community.

REP. MC CULLOCH asked Ms. Koutnik to discuss the possible result to the children in not removing them from a home.

Ms. Koutnik believed that for the most part children were being removed soon enough. She wanted to err on the side of protection for the children even though she was a strong advocate for families. A child left in an abusive situation tells the child that the advocates in the system are not to be trusted. The worst result could be death.

CHAIRMAN CLARK asked how much time was spent on an average on each of the cases by judges.

Ms. Gilke said each case varied by the numbers of witnesses and documentation; therefore, she could not answer the question.

CHAIRMAN CLARK addressed the fact that the proponents were advocating the bill in its original form. He said he had only heard denial from DFS that the situations described by the proponents really do happen. He asked if she felt that the people who had testified in the hearings on SB 206 were not being truthful about what is really happening or did she feel there were some abuses by DFS.

Ms. Gilke said she agreed with Mr. Hudson that there were legitimate concerns and that something had happened to cause them to testify in support of the bill.

CHAIRMAN CLARK asked the director of the department to respond.

Mr. Hudson apologized if they had left the impression that they were in denial. He said that on all levels of the department they had had discussions about treating clients with respect and the implications and consequences of what they do. He said they take the issue head on.

CHAIRMAN CLARK asked if those who had abused their authority should be terminated from employment and in the last two years how many in the agency had been terminated because of abuses.

Mr. Hudson spoke in admiration of the majority of the people who work in the field for the department. He said that two years ago they had examined the department closely and over those two years had terminated 11 people, twice that number on corrective action and there were a few who had voluntarily resigned.

REP. LIZ SMITH asked what procedural steps were taken in disciplinary action when there had been a complaint.

Mr. Hudson outlined the procedure.

REP. SMITH complimented the director and the positive steps he had taken to correct real and perceived problems with DFS.

Mr. Hudson stated the mission of the department and assured the committee that they would respect everyone involved in the system.

{Tape: 3; Side: A; Approx. Counter: 18.8}

Closing by Sponsor:

SEN. BURNETT said that the caseworker in the field had too much power which was being used to intimidate the people. He did not want to imply that the department was not necessary, but that those abuses needed to be addressed. He said that the problems which had arisen were the result of one person having too much authority. He said that the constitutional right to be considered innocent until proven guilty needed to be re-established in and by the department. He recounted cases which he felt substantiated his position and the need for the bill.

Motion: REP. MC CULLOCH MOVED TO ADJOURN.

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/8/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

SENATE BILL NO. 206

INTRODUCED BY

Bismuth Simpkins
AKLESTAD Benedict ClarkGRINOE JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR ENDANGERMENT OF THE CHILD'S WELFARE; PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD REMOVED FROM THE HOME; AND AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-609, AND 41-3-1103, MCA."

WHEREAS, the Legislature finds it necessary to restore public confidence in the child protective system and to provide protection of individual and family civil rights as guaranteed by the state and federal constitutions; and

WHEREAS, present Montana law arguably allows the Department of Family Services to circumvent the constitutional rights of individuals and families; and

WHEREAS, Montana law should require that the burden of proving allegations of child abuse or neglect be on the Department and that those allegations be proved beyond a reasonable doubt, which would reduce the incidence of false charges of alleged abuse, resulting in a corresponding savings to the general fund; and

WHEREAS, there is no room for error in the removal of children from the home, and extreme care must be taken to avoid ruining a family, parent, or individual through government intrusion or mistake; and

WHEREAS, it is necessary to restore the sacred principle of "innocent until proven guilty" to the process of removal of a child from the home in cases of alleged abuse or neglect; and

WHEREAS, child abuse and neglect is a crime and must be addressed as a crime.



(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but ~~in such case~~ the court having jurisdiction of the custody of the child ~~must~~ shall consent to adoption, and a certified copy of its order ~~shall~~ must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department, ~~of family services or of an agency, or witnessed by a representative of the court.~~

Section 2. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is ~~hereby declared to be~~ the policy of the state of Montana to:

(a) ~~insure~~ ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible and provide legal redress for the unlawful interference with the family's right to remain intact; and

(e) ensure that there is no forced removal of a child from the family because of suspected abuse or endangerment of the child's welfare by an immediate family member or family associate without the filing of a criminal complaint charging abuse or endangerment against that immediate family member or family associate.

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection; and

(c) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage free from proselytism.

(3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

1 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;
2 (d) who is destitute;
3 (e) who is dependent upon the public for support; or
4 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has
5 been transferred to a licensed agency.

6 (8) "Family" means at least one natural or adoptive parent or legal guardian with at least one minor
7 child.

8 (9) "Family associate" means a person who may or may not live within the household of a child
9 but who is or has been granted unencumbered access to the child by a natural or adoptive parent,
10 stepparent, or legal guardian of the child.

11 ~~(8)~~(10) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
12 other person responsible for the child's welfare:

13 (a) knowingly inflicts or knowingly allows to be inflicted upon the child physical or mental injury;

14 (b) knowingly commits or knowingly allows to be committed sexual abuse or exploitation of the
15 child;

16 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child
17 was abused or neglected by a parent or person responsible for the child's welfare;

18 ~~(d)~~(d) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
19 supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
20 financial or other reasonable means to do so;

21 ~~(e)~~(e) abandons the child by leaving the child under circumstances that make reasonable the belief
22 that the parent or other person does not intend to resume care of the child in the future or ~~by~~ willfully
23 ~~surrendering~~ surrenders physical custody for a period of 6 months and during that period does not manifest
24 to the child and the person having physical custody of the child a firm intention to resume physical custody
25 or to make permanent legal arrangements for the care of the child; or

26 ~~(f)~~(f) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
27 and locate the parents have failed.

28 (11) "Immediate family member" means a parent, guardian, or natural relative of a child and includes
29 the natural grandparent of the child.

30 (12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required



infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. ~~However, the~~

(b) The term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

~~(a)(i)~~ the infant is chronically and irreversibly comatose;

~~(b)(ii)~~ the provision of treatment would:

~~(A)~~ merely prolong dying;

~~(B)~~ not be effective in ameliorating or correcting all of the infant's life-threatening conditions;

or

~~(C)~~ otherwise be futile in terms of the survival of the infant; or

~~(d)(iii)~~ the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

~~(17)(23)~~ "Youth in need of care" means a youth who is dependent, abused, or neglected ~~as defined in this section.~~

Section 4. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information that they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of ~~family services~~ or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,

1 any evidence of previous injuries;

2 (c) any other information that the maker of the report believes might be helpful in establishing the
3 cause of the injuries or showing the willful neglect and the identity of the person or persons responsible
4 ~~therefor for the injuries or neglect~~; and

5 (d) the facts ~~which that~~ led the person reporting to believe testify under oath that the child has
6 suffered injury or injuries or willful neglect, within the meaning of this chapter."

7
8 Section 5. Section 41-3-202, MCA, is amended to read:

9 "41-3-202. Action on reporting. (1) Upon receipt of a report, as required by 41-3-201, that a child
10 is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly
11 conduct ~~a thorough~~ an initial investigation into the home of the child involved or any other place where the
12 child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial
13 matters ~~which that~~ in the discretion of the investigator are relevant to the investigation. In conducting an
14 investigation under this section, a social worker may not inquire into the financial status of the child's
15 family or of any other person responsible for the child's care, except as necessary to ascertain eligibility
16 for federal assistance programs or to comply with the provisions of 41-3-406.

17 (2) An initial investigation into the home of the child may be conducted when an anonymous report
18 is received. However, the investigation must within 48 hours develop independent, corroborative, and
19 attributable information in order for the investigation to continue. Without the development of independent,
20 corroborative and attributable information, a child may not be removed from the home.

21 ~~{2}{3}~~ (3) The social worker is responsible for assessing the family and planning for the child. If the
22 child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent
23 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and
24 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records
25 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer
26 conducting an interview of the child, an employee of the public school attended by the child involved may
27 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

28 (4) All examinations of the child must be attended by the independent examining psychologist or
29 physician representing the family and by the social worker. If the child is interviewed by the social worker,
30 an unedited videotape with audio track must be made available for unencumbered review by the family.

1 or guardian. The cost of the x-rays ordered and taken under this section ~~shall~~ must be paid by the county
2 child protective service agency.

3 (5) Evidence collected in the questioning of a child by an investigator without the presence of a
4 videotape with audio track is inadmissible in a court to support a motion to temporarily remove the child
5 from the family, grant temporary custody, or terminate parental rights.

6 ~~(6) All~~ At the time that the written confirmation report is sent or as soon after the report is sent
7 as possible, all written, photographic, or radiological evidence gathered under this section ~~shall~~ must be
8 sent to the local affiliate of the department and copies must be sent to the child's family at the time the
9 ~~written confirmation report is sent or as soon thereafter as is possible.~~

10
11 Section 7. Section 41-3-205, MCA, is amended to read:

12 "41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department of
13 social and rehabilitation services, the department of family services and its local affiliate, the county welfare
14 department, the county attorney, and the court concerning actions taken under this chapter and all records
15 concerning reports of child abuse and neglect must be kept confidential, except as provided by this section.
16 Any Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized
17 dissemination of their the contents of case records is guilty of a misdemeanor.

18 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
19 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an
20 issue before it.

21 (3) Records may also be disclosed to the following persons or entities in this state or any other
22 state:

23 (a) a department, agency, or organization, including federal agencies, legally authorized to receive,
24 inspect, or investigate reports of child abuse or neglect;

25 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
26 family or child who is the subject of a report in the records;

27 (c) a licensed health or mental health professional who is treating the family or child who is the
28 subject of a report in the records;

29 (d) a parent, or guardian, or person designated by a parent or guardian of the child who is the
30 subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with disclosure



1 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
2 reporting facts or statements made by an immediate family member under subsection (4) if the news
3 organization, employee, writer, or reporter has made every effort to avoid publicly identifying the child who
4 is the subject of the proceeding.

5 ~~(5)(6)~~ Nothing in this This section is not intended to affect the confidentiality of criminal court
6 records or records of law enforcement agencies."
7

8 Section 8. Section 41-3-206, MCA, is amended to read:

9 "41-3-206. Procedure in case of child's death. (1) ~~Any~~ A person or official required to report by
10 law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall
11 report under oath his the person's suspicion to the appropriate medical examiner or law enforcement officer.
12 Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or
13 neglect may report under oath his the person's suspicion to the appropriate medical examiner or law
14 enforcement officer.

15 (2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing,
16 to the local law enforcement agency, the appropriate county attorney, the local child protective service,
17 the family of the deceased child, and, if the person making the report is a physician, the physician."
18

19 Section 9. Section 41-3-301, MCA, is amended to read:

20 "41-3-301. Emergency protective service. (1) ~~Any~~ A child protective social worker of the
21 department ~~of family services~~, a peace officer, or the county attorney who has reason to believe that any
22 a youth is in immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ the
23 youth in a protective facility. The department may make a request for further assistance from the law
24 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify
25 the parents, parent, guardian, or other person having legal custody of the youth at the time the placement
26 is made or as soon ~~thereafter~~ after placement as possible.

27 (2) ~~No~~ A child who has been removed from ~~his~~ the home or any other place for ~~his~~ the child's
28 protection or care may not be placed in a jail.

29 (3) A petition ~~shall~~ must be filed pursuant to 41-3-401 within 48 hours of emergency placement
30 of a child unless arrangements acceptable to the agency for the care of the child have been made by the

1 any period of separation from the family, and make recommendations to the court concerning the child's
2 welfare; and

3 (f) to be a friend and to provide for the daily nurturing needs of the child while separated from the
4 family;

5 (g) to act as a medium for communication with the immediate family members, other family
6 members, and friends of the child during the separation period;

7 (h) to retrieve from the family any personal property that the child desires to have during the
8 separation period;

9 (i) to report directly to the judge on a regular basis the guardian ad litem's observations regarding
10 the needs and emotional state of the child during the separation period and the impact of the separation
11 on the child; and

12 ~~+(j)~~ to perform other duties as directed by the court."

13
14 Section 11. Section 41-3-401, MCA, is amended to read:

15 "41-3-401. Abuse, neglect, and dependency petitions. (1) After filing criminal charges alleging
16 abuse or endangerment against a family member or family associate, the county attorney, the attorney
17 general, or an attorney hired by the county welfare department or office of human services shall be is
18 responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney, or the
19 attorney general, or an attorney hired by the county welfare department or office of human services with
20 the written consent of the county attorney or attorney general, may require all state, county, and municipal
21 agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as
22 that may be necessary.

23 (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.
24 ~~Such petitions shall~~ Petitions must be given preference by the court in setting hearing dates.

25 (3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the
26 ~~state of Montana.~~ The rules of civil procedure shall apply except as ~~herein~~ modified in this part. Proceedings
27 under a petition are not a bar to criminal prosecution.

28 (4) The parents or parent, guardian, or other person or agency having legal custody of the youth
29 named in the petition, if residing in the state, ~~shall~~ must be served personally with a copy of the petition
30 and summons at least 5 days prior to the date set for hearing. If ~~such~~ the person or agency cannot be

1 ~~where in which~~ it appears that a youth is abused or neglected or is in danger of being abused or neglected,
2 the county attorney, the attorney general, or an attorney hired by the county welfare department or office
3 of human services, after filing criminal charges alleging abuse or endangerment, may file a petition for
4 temporary investigative authority and protective services.

5 (2) A petition for temporary investigative authority and protective services ~~shall~~ must state the
6 specific authority requested and the facts establishing probable cause that a youth is abused or neglected
7 or is in danger of being abused or neglected.

8 (3) The petition for temporary investigative authority and protective services ~~shall~~ must be
9 supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the
10 county welfare department or office of human services or by a department of family services report stating
11 in detail the facts upon which the request is based."

12
13 Section 13. Section 41-3-403, MCA, is amended to read:

14 "41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of criminal charges and
15 a petition for temporary investigative authority and protective services, the court may issue an order
16 granting relief that may be required for the immediate protection of the youth.

17 (b) The order, along with the petition and supporting documents, must be served by a peace officer
18 or a representative of the department on the person or persons named in the order. When the youth is
19 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
20 or other person having legal custody of the youth, at the time the placement is made or as soon after
21 placement as possible..

22 (c) The order must require the person served to comply immediately with the terms of the order
23 or to appear before the court issuing the order on the date specified and show cause why the person has
24 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
25 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden
26 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
27 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
28 affected youth is admissible at the hearing.

29 (d) Upon a failure to comply or show cause, the court may hold the person in contempt or place
30 temporary legal custody of the youth with the department until further order.



1 an unencumbered telephone call to the child at least 3 days each week for a minimum of 1 hour each call.
2 The family or family member is also entitled to at least one personal visit each week for a minimum of 3
3 hours.

4 ~~{4}(6)~~ (a) If the court determines that the youth is not an abused, neglected, or dependent child,
5 the petition ~~shall~~ must be dismissed and any order made pursuant to 41-3-403 ~~shall~~ must be vacated.

6 (b) If the court determines that the youth is an abused, neglected, or dependent child, the court
7 shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or
8 required investigations. The court may issue a temporary dispositional order pending the dispositional
9 hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

10
11 Section 15. Section 41-3-406, MCA, is amended to read:

12 "41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care. (1) If
13 a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making
14 any of the following dispositions to protect the welfare of the youth:

15 (a) permit the youth to remain with the youth's parents or guardian, subject to those conditions
16 and limitations the court may prescribe;

17 (b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided
18 in 41-3-408;

19 (c) transfer legal custody to any of the following:

20 (i) the department;

21 (ii) a child-placing agency that is willing and able to assume responsibility for the education, care,
22 and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide
23 care of the youth; or

24 (iii) a ~~relative~~ family member or other individual who, after study by a social service agency
25 designated by the court, is found by the court to be qualified to receive and care for the youth;

26 (d) order any party to the action to do what is necessary to give effect to the final disposition,
27 including undertaking medical and psychological evaluations, treatment, and counseling that does not
28 require an expenditure of money by the department unless the department is notified and a court hearing
29 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
30 family, insurance, and other resources have been examined.

- 1 (i) provide sufficient security to ensure compliance with the arrangement;
- 2 (ii) be in writing and be signed by a representative of the department and the person required to
- 3 make contributions; and
- 4 (iii) if approved by the court, be entered into the record of the proceeding.
- 5 (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
- 6 the court may modify its order for the payment of contributions required under subsection (3).
- 7 (6) (a) If the court orders the payment of contributions under this section, the department shall
- 8 apply to the department of social and rehabilitation services for support enforcement services pursuant to
- 9 Title IV-D of the Social Security Act.
- 10 (b) The department of social and rehabilitation services may collect and enforce a contribution order
- 11 under this section by any means available under law, including the remedies provided for in Title 40,
- 12 chapter 5, parts 2 and 4."

13

14 Section 16. Section 41-3-609, MCA, is amended to read:

15 "41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal

16 relationship upon a finding that any of the following circumstances exist:

- 17 (a) the parents have relinquished the child pursuant to 40-6-135;
- 18 (b) the child has been abandoned by ~~his~~ the child's parents as set forth in 41-3-102~~(8)(d)~~(10)(e);
- 19 (c) the child is an adjudicated youth in need of care and both of the following exist:
- 20 (i) an appropriate treatment plan that has been approved by the court has not been complied with
- 21 by the parents or has not been successful; and
- 22 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
- 23 reasonable time; or
- 24 (d) the parent has failed to successfully complete a treatment plan approved by the court within
- 25 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
- 26 legal custody under 41-3-410.

27 (2) In determining whether the conduct or condition of the parents is unlikely to change within a

28 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship

29 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders

30 the parents unfit, unable, or unwilling to give the child adequate parental care. In making such

1 (b) exercise licensing authority over all youth foster homes, youth group homes, and child-care
2 agencies;

3 (c) collect and disseminate information relating to youth in need of care, youth in need of
4 supervision, and delinquent youth;

5 (d) provide for training of program personnel delivering services;

6 (e) in cooperation with youth care facility providers, develop and implement standards for youth
7 care facilities;

8 (f) maintain adequate data on placements it funds in order to keep the legislature properly informed
9 of the following:

10 (i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by
11 category in out-of-home care facilities;

12 (ii) the cost per facility for services rendered;

13 (iii) the type and level of care of services provided by each facility;

14 (iv) a profile of out-of-home care placements by level of care; and

15 (v) a profile of public institutional placements; and

16 (g) administer all funds allocated to the department for residential alcohol and drug abuse treatment
17 for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths
18 who require treatment.

19 (2) The department may:

20 (a) enter into contracts with nonprofit corporations or associations or private organizations to
21 provide substitute care for youth in need of care, youth in need of supervision, and delinquent youth in
22 youth care facilities;

23 (b) accept gifts, grants, and donations of money and property from public and private sources to
24 initiate and maintain community-based services to youth;

25 (c) adopt rules to carry out the administration and purposes of this part.

26 (3) The department shall pay for room, board, clothing, personal needs, transportation, and
27 treatment in youth foster care homes and youth group homes for youths committed to the department who
28 need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must
29 be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under
30 this subsection may not exceed appropriations for the purposes of this subsection.

SENATE BILL 206

THE CONSTITUTION SAYS, "...YOU HAVE A RIGHT TO CONFRONT YOUR ACCUSERS, AND THE RIGHT TO CROSS-EXAMINE THEM." UNDER THE PRESENT SYSTEM OF DFS, WHEN A HEARSAY ACCUSATION IS INTRODUCED, YOU DON'T HAVE THAT RIGHT.

IN VIRTUALLY ALL CASES IN WHICH ALLEGATIONS OF CRIMINAL CONDUCT ARE MADE, POLICE INVESTIGATE AND MAKE ARRESTS. YET, WHEN THE CHARGE IS CHILD ABUSE, SOCIAL WORKERS CALL THE SHOTS, AND THE SYSTEM DOES NOT HOLD THEM ACCOUNTABLE.

WHAT IS WORSE, ONCE PARENTS ARE ACCUSED, THE BURDEN OF PROOF IS ON THEM TO PROVE THEIR INNOCENCE, UNLIKE IN A CRIMINAL TRIAL, WHERE THE BURDEN OF PROOF IS ON THE ACCUSER. CHILDREN ARE OFTEN TAKEN AWAY WITHOUT THE PARENTS EVEN HAVING A CHANCE TO STATE THEIR CASE.

WE'VE REACHED THE POINT WHERE AN ACCUSATION IS ALMOST TANTAMOUNT TO A CONVICTION. BASELESS CHARGES ARE RUINING MANY FAMILIES AND PEOPLES' LIVES.

UNDER FEDERAL LAW AND IN ALL 50 STATES, EVERYONE WHO REGULARLY WORKS WITH CHILDREN, (TEACHERS, COUNSELORS, DOCTORS, NURSES) IS REQUIRED TO REPORT SUSPICION OF CHILD ABUSE TO LOCAL AUTHORITIES. SUSPICION, HOWEVER, IS NOT FACT AND WHEN SOCIAL WORKERS MAKE MISTAKES, THE PEOPLE THE SYSTEM IS DESIGNED TO PROTECT (INNOCENT CHILDREN), OFTEN WIND UP AS VICTIMS. CHILDREN ARE REMOVED NEEDLESSLY FROM FAMILIES. A NUMBER WILL BE FAR MORE

SERIOUSLY HARMED, WHETHER PHYSICALLY OR PSYCHOLOGICALLY, THAN IF STATE OFFICIALS HAD NEVER HEARD OF THEM.

EVERYONE AGREES THE SAFETY AND WELFARE OF OUR CHILDREN MUST BE PARAMOUNT. STILL, EXPERTS ALSO AGREE, WE CAN HELP CHILDREN WHO NEED PROTECTION IN WAYS THAT PREVENT FAMILIES FROM BEING TORN APART.

UNDER CURRENT LAW, SOCIAL WORKERS HAVE AN INCENTIVE TO PUT CHILDREN IN FEDERALLY FUNDED FOSTER CARE PROGRAMS, BECAUSE IF THEY KEEP FAMILIES INTACT THEY GET MUCH LESS FINANCIAL FUNDING.

THE KEY IS TO REVERSE THE FINANCIAL INCENTIVES, THEN THE FOSTER CARE POPULATIONS WILL DROP DRASTICALLY. WHY IS THIS CRUCIAL? WHEN PLACING A CHILD IN FOSTER CARE "YOU HAVE SENTENCED HIM TO A DYSFUNCTIONAL LIFE".

SENATE BILL 206 WILL REQUIRE CASE WORKERS FROM REMOVING CHILDREN FROM THEIR HOMES UNLESS THERE IS A CLEAR, COMPELLING THREAT TO THEIR WELL-BEING. IN TOO MANY INSTANCES, CASEWORKERS ARE USING THERAPISTS AND COUNSELORS TO HAMMER STATEMENTS OUT OF BEWILDERED CHILDREN, WHILE THE POLICE, WHO ARE TRAINED TO CONDUCT INVESTIGATION, JUST GO ALONG; "THAT'S THE TAIL WAGGING THE DOG".

ALL CASES SHOULD BE EXAMINED THE BROAD CATEGORY OF "NEGLECT" WHICH ACCOUNTS FOR 50 PERCENT OF ALL CHILD ABUSE REPORTS. THERE IS NO UNIFORM DEFINITION - CASE WORKERS AND JUDGES ARE FREE TO INTERPRET IT AS THEY WISH. THIS IN ITSELF INVITES ABUSE.

CHILD PROTECTION AGENCIES AND THEIR EMPLOYERS SHOULD BE HELD ACCOUNTABLE, CONFIDENTIALITY LAWS ARE SUPPOSED TO PROTECT THE CHILDREN AND FAMILY, INSTEAD THEY SHIELD THE BUREAUCRATS AND THE

LEGAL SYSTEM. THE IMMUNITY FROM LAWSUITS THAT CASEWORKERS ENJOY, INVITES SYSTEMATIC ABUSE. POLICE CAN BE CHARGED WITH A CRIME AND HAULED INTO COURT AND THOSE WORKING FOR CHILD PROTECTIVE AGENCIES SHOULD NOT BE TREATED DIFFERENTLY.

CHILD ABUSE CASES SHOULD NEVER HAVE BEEN REMOVED FROM THE CRIMINAL JUSTICE SYSTEM WITH ITS CONSTITUTIONAL SAFEGUARDS INCLUDING THE RIGHT TO A PUBLIC TRIAL BY JURY.

UNTIL CHILD ABUSE IS RETURNED TO THE CRIMINAL JUSTICE SYSTEM WITH ITS CONSTITUTIONAL GUARANTEES, WHERE THERE IS PUBLIC SCRUTINY AND ACCOUNTABILITY OF THE ACTIONS OF THE DEPARTMENT, THERE IS NO REMEDY FOR THE FAILURES OF OUR PRESENT SYSTEM.

SENATOR JIM BURNETT

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By BRUCE D. CRIPPEN, CHAIRMAN, on February 6,
1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 206

{Tape: 1; Side: A; Approx. Counter: 00}

Executive Action: None.

HEARING ON SB 206

Opening Statement by Sponsor:

SENATOR JIM BURNETT, Senate District 12, Luther, sponsored SB 206. He presented the bill that he said had been in the making for the past four years. He gave the committee a packet of information (EXHIBIT 1) which included a list of more than 200 people who had contacted him during that time. The telephone

numbers were included for contacts if desired. The need for change is astronomical in this particular department, he said. He read from prepared testimony on Page 1 of the packet. SENATOR BURNETT said that he thought there was no impact, but the Department of Family Services issued a note that indicated a \$500,000 cost. He disagreed with that figure and issued his own response (EXHIBIT 2). He read the bill's intent from Page 1 of the bill. He maintained that there cannot be abuse if there is no abuser. He read the underlined sections of the bill that had been significantly changed.

In two instances he wanted to change "civil action" to "criminal action" in this bill, but he told the committee he had failed to do this.

Proponents' Testimony: REPRESENTATIVE LARRY GRINDE, House District 94, Lewistown, spoke in favor of SB 206. He said that in most cases the Department of Family Services (DFS) does a good job, but some things needed attention. He said that most of the calls he received at home concerned the area of child and family services. He gave a brief history. In Lewistown a woman died laying in her own feces from malnutrition, he said. This was reported on several occasions and nothing was done. Nobody took responsibility. The family was tried and found innocent, although he felt they were negligent. He thought that DFS could have prevented this. In another case, a young woman was living with her family. She gave birth to a baby one morning and that night, DFS representatives were there to take the baby away. He said maybe there was a need. He told the committee that they had to start using some common sense.

He had some items to address on the subject:

1) The qualifications of social workers: he said when workers are hired, the only criteria is a college education in some related field. He asked the committee to review hiring criteria to make sure of qualifications. There is no liability for the people in the field. He said everyone should be liable for their actions, and the duties they perform.

2) Rotation of social workers: He did not want to uproot their lives, but he said but it may help the workers to separate themselves from some of the cases if they did not know the players involved and heard rumors, innuendoes and accusations that are rampant in small towns.

3) Anonymous reporting: He thought people could make phone calls to the Family Services because of personal vendettas. The workers, then, are forced to go and investigate, he said. He thought the accused should have the right to face accusers. He said people making complaints should have to come forward and tell why.

4) Videotaping: He recognized the objections to this portion of

the bill, but said it was only fair. If there was no videotape, there should be other family members there, he said. The fiscal note said that in each case, a tape would have to be made, but that was wrong. He said other people should be at the table when interviews are given and not just the people from the social worker area.

There are other related bills introduced, he said. One had to do with the purging of files. This needs to be done when Family Services investigates a case and no problems are found. That file still sits there, even though it is without reason. He said everyone wanted to protect the children. He said there has to be some rights for families on recourse. Families do not have a way to get a court date, or see their children. He hoped for a resolution to include his recommendations, the bill, and some suggestions from Family Services which they had consulted during the prior week. He said that nothing had changed when he took his concerns to the DFS for the past four years.

Paul Befumo, representing himself and Montanans for Due Process, spoke in support of SB 206. He said current law resembles laws of many states, but it was not enforced in the same way. What Montana had claimed to do through their legislative and judicial branches, is to take children from their homes and give temporary custody to DFS only on a showing of probable cause. However, the way the Montana Supreme Court defined, "temporary" is until the child reaches 18 years of age. So, he maintained, if the State of Montana takes a child, they have claimed the authority to give temporary custody to DFS, and never afford the people who have been accused of abuse and neglect an adjudicatory hearing. All they have to show is a probable cause hearing. This bill would force DFS, if they wish to hold onto children, to have some sort of hearing where there can be findings of fact and conclusions of law that will justify the taking of the children. What the bill won't do, he said, is to prevent DFS from going in in an emergency situation where a child is in imminent danger. But once DFS goes in to do that, it sets specific time limits wherein they must justify the allegations made. DFS cannot handle this situation of their own, he said, as evidenced in the case of Marcia Kirchner (contained in EXHIBIT 1). A statement is made that she quit her job, which is incorrect. Within three days after the affidavit was filed, she was grilled by two higher authorities in DFS and the next day was dismissed from her position without cause and without any compensation. They fired her. This is how DFS handles their own caseworkers, he said. He said that the legislative and judicial branches are terminating parental rights without going through the statutes that dictate how parental rights are supposed to be terminated. If that agency takes a child for temporary custody, and that custody lasts until the child is 18 years old, the parental right has been terminated. He said legislation is needed to change that. Parents need the opportunity for an adjudicatory hearing to establish whether or not the underlying allegations are true or not.

William V. Fowler, Missoula, representing himself, said he had been enmeshed in the DFS situation for four years. In July of 1991 the Department of Family Services removed from his home a child over which he had custody. The reason for the removal was allegations from a half-brother, age 3, stating that his 7-year-old son had tried to put a toy up his "hindy-butt." Mr. Fowler was accused of teaching him how to do that. He had not been allowed to see his son, nor speak to him on the phone for the four years. He had hired different attorneys and spent \$35,000 and has never had a show-cause hearing. He now has a case in federal court to appeal. They said he had to exhaust his remedies, but he could not get the show-cause hearing after four years. It has to be changed, he said. Parental rights have been taken away and he told the committee that they would not get away with it for very long. He presented court petitions. (EXHIBITS 3 and 4).

Dan Newman, Missoula, representing himself, asked that where criminal law is violated, charges be prosecuted. He said that no immunity should be granted anyone working for the state, either in judiciary or an attorney. He said that ethical standards are abused in the state by the conduct of professionals including psychologists, social workers, and attorneys. The duty to

be done and not to be done, he said. He ran for Sheriff of the Peace in Missoula and got 5,000 votes as opposed to 23,000 for his opponent. He said he was proud that there were 5,000 people in Missoula County who would stand with him to prosecute criminals. He said he was for law and order and bringing down organized crime, which he said ran the County of Missoula and perhaps other counties.

Fred Rushton, Vaughn, represented himself and spoke in favor of the bill. He told the committee about his son who lost his children to DFS because of an anonymous call that accused him of drunkenness and of beating his children. An investigation showed that he had no record and never drank in his life. The children were given back. However, he contended that Social Services don't like to be proven wrong and have done everything they could for the last three or four years to prove him an unfit father. Teachers at the childrens' schools had been enlisted to quiz the children about abuses and would call the social workers and police if they could get the children to say anything. For these reasons, his son moved out of the state to Arizona, leaving a \$50,000-a-year job. The family is doing well there now, he said.

David Brinley, from Central Montana, speaking for himself, supported SB 206. He read from a written statement. (EXHIBIT 5)

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Vicki Vincent, representing herself and her daughter, Amanda Henderson, appeared to support SB 206. She said she was lucky and got her daughter back after five weeks. Her daughter had

been taken from school by Child Protective Services acting on an anonymous call in which abuse was involved. The Protective Services decided she had been sexually molested by her dad on top of all else, she said. Ms. Vincent refused to speak to the social workers because she realized she needed a lawyer, but that refusal was held against her. When she went for a meeting with the social worker and the daughter, she was not allowed to ask questions, only to say that she loved her and supported her in everything. She wasn't allow to ask what happened. She did try to ask, however, and the social worker got very nasty and terminated the visit. Due to the allegations of sexual molestation, her husband was evicted from the house the following night. The social worker claimed he was still there, but did not bother to come and find out, she said. Ms. Vincent called everyone she could, legislators, papers, television stations, etc. The advise she garnered was that she would be lucky to ever get her daughter back. She heard nothing but bad reports about DFS. She finally talked to her daughter on a fluke and the daughter reported that the social worker had cautioned her not to talk to her mother about what had happened, or she would be moved so far away that she would never see her mother again. They had told the daughter that the mother hated her and did not want her at home. They divided and conquered, she contended. She found out later that the social workers had talked to the daughter for

clearly put into the daughter's mind to make it appear that she had been molested. She repeatedly asked to go home, and was told if she played the game for the social workers, she would be allowed to go home. The daughter later realized the social workers had lied. Ms. Vincent wondered how many children were taken under the same circumstances and brainwashed into thinking that their parents don't want them. She did not know how Social Services could be allowed to keep kids for several months without the parents being charged with anything, but on accusations. She said that she was held responsible, as a nurse, for any mistakes she made. She could not understand why people who are messing with other people's lives are not held responsible.

She did not support the rotation of social workers. She said they would only have new prey to work on. She did support changing the anonymous reporting law. Anyone could call in with a personal vendetta, she said. Videotaping should be done in the first interview with no leading questions. It should be done by someone other than the social worker that initiated the case, perhaps a third party. She also supported SB 270 which deals with purging the files if no criminal charges are filed. She introduced her daughter.

Amanda Henderson spoke to the committee. The social worker had put words into her mouth, she said, to say she was sexually abused. She said the worker promised if she told her what she wanted to hear she would go home that night. She said she was in custody for five more weeks, and she later found out they were

lying to her as well as to her family. The first foster home she was placed in the foster mother was good friends with the social worker. The foster mother was an alcoholic who constantly verbally abused her own son and another child in the home at the time. Ms. Henderson was moved to a second home wherein her parents knew the family. She said the social workers had screwed up her life, causing her nightmares about being kidnapped, as she contends she was. She does not trust strangers because she is fearful of what happened would happen again. She gets sick to her stomach every time she hears the words, "DFS." She said the bill needs to pass because there could be many families "messed up" by the social workers.

Penny Bernhardt, Belgrade, spoke for herself in favor of SB 206. She read written testimony. (EXHIBIT 6)

Mindy Mistic, Grass Range, represented herself. She told the committee that in 1991 her ex-husband had made false accusations against her because she was planning to re-marry and he did not want her to. He decided to take the love of her life, her kids, she said. She went through three court hearings and all they found against her was that her daughter had not been enrolled in a speech class. The child had accidentally knocked her teeth out previously and the dentist told the mother not to worry about it. The judge reinstated the children. Her husband along with the DFS re-opened the divorce decree to contest custody and took the children in 13 subsequent cases. She said that DFS later admitted to wrongdoing to re-open the divorce case. She had not seen or had her children for four years, she said. She had sneaked into school and basketball games to watch them and sneaked around church to give them gifts. She stated that she lost herself when she lost her children and said her insides were taken, leaving only the body to walk with. Four years later her ex-husband called her and asked her to take the youngest daughter, age 12, because he did not want her. He kept two older children, ages 14 and 18. She maintained the DFS had interfered in her life, assisting her ex-husband in untrue accusations. She felt the DFS had too much control. She also said the background check should be put into effect. The social worker who took her children was restricted from seeing his own child because of sexual, mental and physical abuse. Ms. Mistic thought the videotaping would be good idea. She said she tape-recorded sessions with social workers where they called her names, but they are not admissible, whereas a video would be. She asked for help in passing the bill.

Joan Austad, Great Falls, represented herself. She read from written testimony. (EXHIBIT 7)

Al Nerling, Sun River, representing himself, spoke on behalf of SB 206. He said he'd been fighting DFS for 12 years for his granddaughter. He finally got her when she was 16 years old, when, he said, the damage was done. He said when Gene Huntington

started Family Services, he was supposed to close the cracks. But 1988, he maintained, it had doubled instead. His granddaughter asked him to keep fighting so that other kids would not have to go through what she had been through. All he wanted is for DFS to abide by the laws we have, which they were not presently doing. He said they were the 'rudest, nastiest, lyingest people' he'd ever met.

John Schubert, Missoula, spoke for himself and his wife, Tammy, in support Sb 206. He submitted a letter he had written to the Governor in September, 1994. (EXHIBIT 8) He said there was a real need for checks and balances within the system. He felt that videotaping was very important.

Karen Kowalczyk, Roundup, represented her fiance~, Larry Lekse, in support SB 206. She spoke to the committee and submitted written testimony. (EXHIBIT 9)

Jerry O'Neil, representing Vocal of Montana, spoke on behalf of Sb 206.

Gary Wilson, Alberton, gave his name in support of SB 206.

Kenneth E. Haugen, Missoula, rose to support the bill. (EXHIBIT 10)

Gerald Bartow, Roundup, also spoke in favor of SB 206.

Wanda Harris, Kalispell, stood in support of the measure.

Michael Billedeoux, Missoula, favored the bill. (EXHIBIT 11)

Frank Fitzgerald lent his name in support of the legislation.

Opponents' Testimony:

Hank Hudson, Director, Department of Family Services, appeared to respectfully oppose SB 206. He said the proposal of checks and balances are the debate and struggle the department members go through daily on every case they hear. They must decide how to balance the legal responsibility they have to protect children and adults with the right that citizens have to be left alone by their government and not be dictated to unnecessarily. He said that the bill has been heard three or four times that he could remember, and each time their department members ask themselves how they could be more careful and cautious in dealing with families while recognizing the effect that removing a child from a family might have on those members of the family. However, they must avoid the tragedy of child abuse and death that occur all too frequently. He said they had tried to safeguard against any social worker "running away with the program", lacking sense and being unfair. During the last hearing of the bill, they presented a chart showing how many people would have to be convinced that it was the right thing to remove a child from a

March 7, 1995

State Capital
Capital Station - Box 14
Attn: Senator Jim Burnett
Helena, MT 59620

Dear Senator Burnett and Representative Bob Clarke;

Enclosed are articles my finance' and I wrote to the Roundup Record Tribune as well as other articles which have appeared regarding the Department of Family Services. Following is the scenario which happened to me, my daughter and my finance'. We believe it is about time DFS was made to stand accountable for their actions and support your Senate Bill 206 as it was originally written. If passed with the current ammendments, the bill will not make DFS any more accountable than they are now. We urge you to have the bill reinstated as it was originally written. If we can be of any further help please feel free to call us at (406) 323-1451.

This is our nightmare which occured with Michelle Sobonya and the DFS:

A verbal exchange occurred on May 8th between Kara, my daughter, and myself. My fiance', Karen Kowalczyk, was also present. We had gone out for "Mother's Day Dinner" around 3:00 p.m. After dinner and returning home, I told Kara we were going to finish fencing the dog kennel. Karen and I had already started the kennel, setting the posts in concrete and stringing part of the cyclone fence for the dogs. I told Kara that beings it was for her dog, as well as Karen's, that she could help and with three of us working on it, it wouldn't take very long to complete it. Kara then proceeded to pout all the way home making for a very tense and uncomfortable atmosphere. Upon arriving at home, Kara and I exchanged words because she didn't want to help with the fence. Kara tore out of the house, got in my pickup and was gone. We had no idea where she was headed, but figured she was headed out to Curtis Goffena's, her boyfriend, because that is where she wanted to go. Karen and I went out to work on the dog kennel. Later that day, around 5:30, we got a telephone call from Vicki Fawcett, Department of Family Services, saying Kara was up at the Sheriff's Office and had filed a complaint against me alleging abuse. We have yet to see a copy of the complaint. There was absolutely no abuse involved in this whole exchange. I also asked that Kara be returned home so we could sit down and discuss the whole situation and that was denied by Vicki Fawcett.

Because Kara is a minor (16), Department of Family Services was called. DFS called and indicated that Kara could come back home after a 48 hour "cooling off" period. After 48 hours I was told to come up and sign papers to place Kara in foster care. I questioned why she was not being returned home after the 48 hours and was told "because we feel it is a threatening situation." No investigation was ever done. To our knowledge, the Department of Family Services did not appear in District Court within 48 hours to show cause why the child had to be removed from the family home. No investigation was ever done in our home to find out if the child was telling the truth. I went up to DFS and talked to Michelle Sobonya and she explained to me that it was in Kara's best interest to be placed in a foster home.

When I questioned the choice of foster home, I was told Kara had requested she be placed with Betty Goffena and that is where DFS was placing her. I questioned the placement of Kara at Betty Goffena's because Betty Goffena was not a licensed foster care home and that Curtis Goffena, Kara's boyfriend, has a mobile home and lives on the same property approximately 50 yards from Betty's back door. I felt this was not a safe or healthy situation that Kara had expressed wanting to live with Curtis, however DFS did not see anything wrong with this as this is where Kara wanted to be. I then told DFS I was holding them totally responsible for my daughter.

I did not admit to any of Kara's allegations of abuse. I admitted to having an argument with Kara regarding the building of the dog kennel and that we had exchanged words in this regard. But not once was there any abuse - just an exchange between myself and my daughter.

I am self employed and have my own construction building business. I was scheduled to be out of town most of the

summer. I did come home, however, on weekends to see my family and take care of business. I had told DFS what my situation was and asked that they keep Karen apprised of the situation as I would be talking to her in the evening. DFS agreed at that time to this arrangement. Karen contacted DFS on several occasions to find out if an appointment could be made so I could call in or if I could reach a counselor after hours as I was up in the mountains, away from a telephone from 7:00 a.m. until 6:00 - 6:30 p.m. every day. I was informed of the office hours and that I would have to call in at that time. Karen explained to DFS that this was impossible, that I was concerned about Kara and wanted to find out how she was doing, but again was INFORMED that these were the hours and I could call collect during that time. Karen told them the collect call part wasn't the problem - the hours were because I was at least a 1/2 hours drive away from a telephone and could not leave my partner on the job by himself because of the risk factor of an accident. DFS was not willing to make any concessions so I could talk to them.

Within 20 days after Kara was removed from home, I have no knowledge of DFS returning to District Court to show cause why the separation must continue.

Only one mediation meeting was ever set up for me and my daughter. Present at that meeting were Michelle Sobonya, social worker for DFS, Curtis, Kara's boyfriend, Kara and myself. This meeting was supposed to be between only myself, Kara and Michelle so we could work on getting Kara back in the family home. Having Kurt there made the meeting very uncomfortable. Some 10 to 15 minutes into the meeting Michelle Sobonya was called away on an "emergency". Kara, Curtis and I were left to finish the meeting on our own. If I was such a threat to my daughter, why was it okay to leave us alone in an unsupervised situation? No attempt was made to set up further meetings between my daughter and I.

Michelle signed an agreement, on behalf of DFS saying that we would be informed of any medical or dental attention Kara needed and it was "by chance" that we found out she had her wisdom teeth out. We were never even informed of that until she was at her Grandfather's house and Karen happened to stop in to talk to my sister. I was told that was wrong and that we should have been told. Nothing was done. She also later found out that Kara had a mole removed and there were some telltale signs of possible cancer so she had to go back for more tests. We were never told about this either. We found out about it through one of Kara's teachers in whom she had confided.

In July, Kara was allowed to take a trip out of state with the approval of DFS. We were never told about the trip and found out about it only after someone asked if Kara had gotten back from Idaho. Again DFS had signed an agreement stating we would be kept informed of what was going on and yet she went to Idaho without our knowledge.

I had also asked for periodic progress reports on meetings Kara was having with Donna Johnson, a counselor, over in Billings. This was never done. I were told she was going, but was never told of the outcome or when we might be able to meet as a family unit so as to resolve any issues that may be present.

In August I was served with a "Petition for Temporary Investigative Authority and Protective Services". This is the first document through this whole ordeal I had ever seen regarding the charges which were being held against me. Due to the lack of communication on behalf of DFS, I refused to sign the documents and hired an attorney, Randy Spaulding.

I decided to try and settle this without the help of DFS. Vicki Knudsen, Musselshell/Golden Valley County Attorney, Floyd Brower, Guardian at Litem for Kara, our attorney Randy Spaulding, myself and my fiancée Karen Kowalczyk, met and reviewed a document drafted by Floyd Brower to keep Kara at the Goffena Ranch. I again questioned the fact of Kara living with her boyfriend with Floyd Brower admitting that Kara and Curtis were in fact sleeping together. Kara being 16 years old and her boyfriend being 21. Floyd Brower and Vicki Knudsen didn't seem concerned even though I was objecting to my daughter being out there. I signed the document as I was threatened to be taken to court and it was in Kara's best interest that I signed it.

Things seemed to go along fine until Kara and her boyfriend Curtis Goffena split up. On October 28th, Kara asked Bette Goffena if she could spend that Friday night in town with one of her friends. To this Bette agreed. Evidently, Bette didn't give Kara a specific time to return home and began to worry about her. On Saturday, October 29th, Bette sent Kurt, now the ex-boyfriend, in to town to find Kara. Evidently Kurt said some nasty things to Kara and an argument ensued. The local police were called and things were broke up. Later Vicki Knudsen picked Kara up and took her to the jail. Kara was taken into custody and Kurt was allowed to leave. According to Kara and in front of Kara's friends, Vicki swore at

her and told her how inconvenient it was to be called as she was in the middle of fixing a hole in her daughter's waterbed and because she had to take Kara to Billings, she would miss her daughter's ball game and took Kara to the jail where she sat for approximately four hours. Kara was taken to Billings and placed in a Youth Detention Center. I was never informed about her being sent to the facility, or being held in jail, and it was not until my sister-in-law called the following day, October 30th, did we find out that she was over there. I still, to this date, do not know what charges were placed against her to warrant her time at the detention center. I was never told when she would be allowed to leave. I told my attorney, who contacted Vicki, Donna and Floyd that I wanted Kara to come back home rather than being locked up in the center. I was never told what the rules as far as telephoning and visiting with Kara while at the facility. Kara finally found out the only people who could call her were myself, my father and his new wife, and her mother. Kara indicated she needed some clothes, shoes and miscellaneous personal items. We asked her if she was permitted to leave the facility and she said yes but it had to be arranged 24 hours in advance.

On November 2nd I contacted Donna Marmon, County Probation Officer, requesting to take Kara out of the facility to get her the clothing items she needed. Donna indicated she would have to talk with Floyd Brower, Guardian at Litem for his approval. I had not heard from her by Friday, November 4, and our 24 hours was drawing to a close. I tried to reach Donna at home but only got her answering machine so left a message seeking permission. Because of the 24 hour window, I called Floyd Brower myself. Floyd said Donna Marmon had not contacted him but as far as he was concerned he didn't have a problem with my taking Kara shopping. Donna Marmon then called back and said she would not give me permission to take her out of the facility, but would not offer an explanation as to why.

On November 12th, Kara called home and talked to Karen as I was helping at a Rotary Auction. Kara indicated that "a friend of my mom's" was taking her on Sunday and she needed some money. She said Donna Marmon was coming to Billings to take Kara to the Girls Basketball Tournament and would she get hold of her and send some money over with her. Karen called Donna Marmon at home and tried to explain the situation, however was met with a very rude and belligerent "You don't have telephone privileges and I won't talk to you" from Donna Marmon. Donna then slammed the receiver down. Karen tried to call her back within a few minutes to see what the problem was and only got her answering machine.

Kara was finally released on Tuesday, November 15th. Even though I had told my attorney, Vicki Knudsen and Donna Marmon, I wanted Kara to come back to the family home, Kara was told that was not an option for her. Her options were to either go live with the mother who abandoned her at age 11 or go to another youth detention facility. Not wanting to go to another facility, Kara agreed to go live with her mother in Boise, Idaho. Brenda Lekse, had to pick Kara up at the Youth Facility and bring her to Roundup. Donna and Vicki would not let Kara even stay in town overnight. She had to be driven back to Billings and then come back on Wednesday for a meeting with Donna. Brenda was included in the meeting with Donna Marmon, however, I was not. Kara claims that Donna wrote some additional stipulations into the Petition after everyone else had signed, however, we have been unable to get a copy of this document to find out if in fact Donna did write things in there. Kara claims Donna and Vicki told her she could not come back to Roundup to even visit with her family until Spring break and she could not come back to live in Roundup until after she reached 18. She cannot graduate with her class in the spring of 95, nor can she even attend the graduation exercises of her classmates because of this stipulation.

On October 31st, Karen called the Department of Family Services and spoke with the secretary. She requested names and telephone numbers of supervisors over DFS in Roundup and was given these. She then called Hank Hudson, the State Director at Helena and explained what I had been through. Mr. Hudson said he wouldn't get involved until "all other people had been contacted" and I should follow the chain of command. Mr. Hudson informed Karen that she should contact Jim Moe in the Lewistown office and have him investigate the matter and if all else failed to call him back.

November 1, 1994 - Karen spoke with Jim Moe's receptionist. Jim was in Harlowton but she would give him the message. She also indicated he was scheduled to come to Roundup the following week.

November 3rd - Karen spoke with Jim Moe and explained the situation with Kara. Gave Jim names and telephone numbers of people to talk to. He indicated he would like to meet with us with November 10th or 15th. He said he would investigate the matter and get back to us to set up the meeting.

November 7th - Talked to Jim Moe. He will meet with us at 3:00 on Thursday November 10th at our home. I

called Randy Spaulding, my attorney to ask him to attend the meeting also. Jim took down all the information and said he would investigate the matter and get back to us.

December 5th - Called Jim Moe regarding status of case. He was on another call but would be given the message.

December 6th - Talked with Jim Moe. He indicated no major thing was done wrong. He felt the case had been handled properly, however it should have been handled as a "Child in Need of Supervision" vs. "Child in Need of Care".

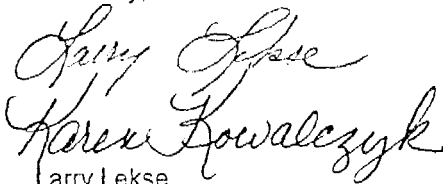
Jan. 10, 1995 - Wrote a lengthy letter to the editor. It was published on January 11th. Consensus of people in town was case was handled very improperly and have heard numerous other horror stories along the same lines. (See attached copy of article).

Senator, hope this helps support your bill. Even though this bill will not help us a whole lot, if we can prevent other families from going through the nightmare we have been through, we will have accomplished something.

We also heard that DFS is asking for an additional \$8 million to finance their department. Until they are held accountable and can justify the \$8 million right up front, we vote that their request be denied.

Thank you very much for keeping us informed. Please put us on your mailing list so we can keep abreast of what is going on with DFS. We are on your side.

Sincerely,

The block contains two handwritten signatures in cursive. The first signature is for Larry Lekse and the second is for Karen Kowalczyk. Both are written in dark ink.

Larry Lekse
Karen Kowalczyk
P. O. Box 373
Roundup, MT 59072
1-406-323-1451

OPINION & LETTERS PAGE

to the family home and were told it was a "threatening" environment. The home environment was NEVER investigated, therefore, how could it be determined it was a "threatening" environment?

FACT: A child can request what home they wish to be placed in.

Kara had talked about moving in with her boyfriend, Curtis Goffena, a couple of weeks before this incident took place. Being only 16, we told her we were very much against it. However, she requested to be placed in Betty Goffena's home and was granted her request by DFS. DFS was not at all concerned about the fact Curtis lived in a mobile home on the same property as Betty. Even after we expressed our concerns about the situation and told them of the conversation we had relative to her moving in with Curtis, they still let her remain there. We were assured, that as long as the two of them were at Betty's house, nothing was going on. However, we were also told that she spent "many late nights" with her boyfriend. We were recently told that if DFS had checked the situation out, 80% of Kara's stuff was at Curtis' not Betty's.

FACT: Even though DFS claims to be a mediator between family members, nothing will be done to reunite the family.

We were told that DFS would set up meetings between us and Kara so we could once again be a family. In the three months DFS was involved, there was only one meeting set up. The meeting which should have been between immediate family members, as well as Michelle Sobonya from DFS, also included Curtis. About 10-15 minutes into the meeting, Michelle Sobonya was called away on "an emergency" and my daughter and I were left there to mediate on our own. Even though I requested additional meetings they were not set up.

FACT: If you are working in an out of the way place and are unable to easily get to a telephone, DFS will not make concessions as to office hours.

I was building a cabin in the mountains and was approximately 30-45 minutes one way from a telephone. We tried to get DFS to set up an evening and time I could call in and get periodic updates on the status of being reunited with my daughter, only to be told that the office hours were 8:00 a.m. to 5:00 p.m. and I would have to get to a telephone at that time.

FACT: Even though you request a specific person as a contact person, DFS WILL NOT honor your request.

Because I was working in the mountains and away from a telephone, I asked DFS to keep my fiancée, Karen Kowalczyk, informed of Kara's progress and any needs she may have. DFS was always requesting things of Karen, i.e. letting Kara come get her personal belongings, stereo, etc. but would not tell her what was going on with the case. It was not until we refused to sign further papers to continue the foster care and started asking questions as the lack of communication on their part, were we told there was a "special form" which needed to be signed in order for DFS to give her this information because she was not a "legal family member."

FACT: Once your child(ren) are placed in foster care, DFS can request as many personal belong-

DFS called and asked if we would bring all of Kara's personal items up to the office. To this we agreed. After transporting all her clothing, make-up, etc. we were then asked for such items as a daybed, telephone, television, horse, piano, etc. Had I not put my foot down and started saying "NO" I feel they would have almost emptied my entire home.

FACT: If your child(ren) need medical attention while in the care of DFS, you will not be told about it.

Kara had doctors appointments and her wisdom teeth pulled while she was in the care of DFS and even though they had signed an agreement stating I would be informed of any and all medical attention she was to receive I found out about everything "through the grapevine."

FACT: DFS can give your child permission to go out of state without your knowledge or approval.

Kara, with the permission of DFS, was allowed to take a trip to Boise, Idaho. I was not aware of this until a family member mentioned she had gone. I would have approved it anyway as she went to visit her mother, but shouldn't I have been consulted first or at least been told she was going, after all that was the agreement with DFS?

FACT: The County Attorney, Vicki Knudson and Youth Probation Officer, Donna Marmon, can send your child to a Youth Detention Facility and they do not have to tell you about it.

Kara was sent to the Billings Youth Services Facility on Saturday, October 29, after an altercation with Curtis. We were NEVER called and told about this decision and found out about it after a telephone call from a family member. When we asked Kara why she didn't call us, she indicated they told her she couldn't call. However, she could call her Grandfather or another family member and tell them. Normally a child being sent to a Youth Services Facility has to be charged with some sort of violation. However, to date, we have never been told exactly what that violation was. Curtis Goffena was never reprimanded even though, according to witnesses, he started the whole altercation. Upon the County Attorney, Vicki Knudson, being called, Kara, in front of witnesses, was sworn at and told how inconvenient it was for Mrs. Knudson to come down because her daughter had a hole in her waterbed which needed fixing and she was also going to miss her daughter's ball game. When a person files for a county job and the county is paying their wages, since when did a person have to consider what family problems were going on and whether or not is convenient for them to do their job? Besides, it was not Kara's choice to have Vicki Knudson called, someone else made that decision for her, so why was Vicki taking this out on her? Is there a personality conflict here, or should this person even have been representing the county?

FACT: The County Attorney and Youth Probation Office can "dictate" who your child can see and talk to once they are placed at a Youth Correction Facility.

I was told the only people who could call Kara were her Grandfather and his wife, myself, and her Mother. Even though Kara and Karen got along really well, Karen was denied any and all contact with Kara at the

otherwise. I requested a four hour outing with Kara to go shopping and out for dinner as it was Karen's birthday and Kara needed some clothes and personal items. I was told I needed to make arrangements 24 hours in advance, so on Wednesday, November 2, I called Donna Marmon to see if she would make the arrangements. I was told she would consult with Floyd Brower, the guardian ad litem for Kara, and get back to me. I had not heard back from Donna Marmon on Friday and was unable to reach her by phone so a message was left on her answering machine. I then called Floyd Brower. He indicated that Donna Marmon had not contacted him but as far as he was concerned, we COULD go shopping with Kara on Sunday. When Donna finally returned my telephone call, she told me I COULD NOT take my daughter out of the facility. I was not given a reason as to this decision. However, the following Sunday, a "friend" of Kara's mother (not a family member) was allowed to take her out shopping for four hours.

FACT: Even though your child(ren) is placed in a Youth Facility and you tell the County Attorney, Probation Officer and Guardian Ad Litem that you would like them back home, your child will not be given that option.

Kara was in the Youth Facility for several days without being told when she would be able to leave. In the meantime, her homework was being brought over to her so she would not get behind on her assignments. When the County Attorney and Probation Officer talked to her, the only options she was given in order to leave was to go live with her mother in Boise, Idaho, or get moved to another correction facility. The option of coming back to the family home, even though there would be 24 hour supervision, was not an option.

Probation Officer Donna Marmon, County Attorney Vicki Knudson and Floyd Brower decided Kara was "A child in need of Supervision." After all this time, six months to be exact, these three "wise" people have come to a conclusion. Isn't it amazing!!! This is exactly what Kara rebelled against from the beginning. Kara had supervision at home and she didn't like it. She wanted more freedom and less supervision. The circle is now complete. Kara has been sent to live out of state with rules and guidelines set by the court. The three "wise" people have reached a conclusion and we, the family, have been put through undo hardship and pain.

Questions remaining unanswered by the "three wise people" are:

—Were these three "wise" people working together? If so, why weren't we able to get the same answers from all three instead of being handed the run around?

—Did telephone calls actually take place between the three "wise" people or is it a case of CYA?

—What was wrong with Kara liv-

ing in Roundup?

—Did the probation officer or county attorney have a personal conflict with Kara?

—Why weren't the parents allowed to help decide what was best for the child?

—Why didn't the county investigate the living arrangements and work schedules of both parents and make a decision based on facts, not hearsay.

—Did the county actually consider what was best for the minor child or did someone who is in a position with a little authority, let that authority go to their head and appoint themselves as the decision maker?

—Was it in the child's best interest to uproot her from a community she lived in and loved, take her away from friends and a school she looked forward to graduating from in the spring, as well as the security of a supervised home, immediate family and close friends and place her in the home of the mother who had abandoned her only 7 years earlier?

My fiancée, Karen, and I would like to thank everyone for their words of concern while we have been dealing with this. We have nothing to gain from writing this letter other than to make people aware of what is going on in our community and with our children and possibly preventing others from having to go through the same. We have lived through a lot of heartache and tense times due to the Department of Family Service, the County Probation Officer, Donna Marmon, the County Attorney, Vicki Knudson, and Attorney, Floyd Brower. We hope that someday they will have to endure the same sort of heartache, stress and humiliation they have put us through. Maybe then they can be a little more compassionate and understanding towards their fellow citizens.

Larry Lekse

Letter to the Editor

After attending a meeting last month with the topic of what we, the community, can do for our children, we felt it was our duty to write this letter and let people know what is going on in our community in reference to our children and the way families are being treated. These are the facts, along with an explanation, as to the situation which happened in our family starting last May.

FACT: Teenagers in this community have more rights than the parents.

An exchange in May occurred between my daughter and I over responsibilities she had agreed to relating to her dog and helping with building a dog kennel. After an exchange of words, my daughter went up to the police station and filed a complaint alleging verbal abuse. Kara is a minor, therefore, the Department of Family Services (DFS) was called. DFS called my fiancée and me and informed us of the charges. We asked Kara to be returned to the family home. That the discussion was just that and nothing more—no threats, verbal or physical abuse or anything—just an argument. However, the department felt a 48 hour "cooling off" period was in order—to this we agreed.

FACT: After 48 hours and NO investigation, your child(ren) can be placed in a non-foster care home.

After the "cooling off" period, we were told we had to come up and sign papers to put Kara in foster care. We

Letter to Editor,

As I read the letter written by Mr. Lekse in the *Roundup Record* last week, I was frustrated, saddened, and shocked. How any parent could write all of this information about their own child in a public forum is beyond me. And after all the time we spent on this case, and how long I have known Mr. Lekse, I was also very disappointed.

Although I am no longer County Attorney, I do still practice law in Roundup and plan to for a long time, and therefore felt the personal attacks by Mr. Lekse had to be addressed. There is no way to respond to all of the allegations he makes under the guise of "FACT" because he and others like him conveniently attack the people he knows cannot respond or defend themselves with any detail because of the confidentiality laws. These laws were passed to protect families, and especially the Youth, but are being used by angry people so only their hearsay and personal views of the facts can be printed in places like this editorial. I can, however, address the specific details Mr. Lekse has already decided to make public through his letter.

Several "facts" were left out of Mr. Lekse's letter. One is that he was represented by an attorney, Mr. Spaulding, during this case from at least the time documents were filed in Court. Another is that the Youth was represented by an attorney, Floyd A. Brower. The third is that Mr. Lekse signed an agreement in order to avoid going to Court and consented in writing to the placement of his daughter with the Goffenas.

Mr. Lekse's detailed description of what happened on October 29, 1994, was very interesting, since he was nowhere to be found when problems started that day and therefore has NO IDEA what happened. The conversation that day between his daughter and I were in reference to a meeting just the day before about everyday common courtesy, keeping your word, thinking of others, and selfish behavior that could result in removal from her current placement. But I guess the story sounds better to him as written and he didn't find it necessary to talk to any officials to get more accurate information. Attempts were made to contact everyone when the placement was changed, but only the mother of the Youth could be reached. Mr. Lekse was not able to be reached, but we did contact his attorney as soon as we were able.

As far as the "great relationship" between the Youth and her father's "fiance," talk to any junior or senior at the Roundup High School and you will hear all about that relationship. It was discussed by the Youth often and clearly, and may have nothing or everything to do with the state being involved in the lives of this family.

For clarification, I will try to explain some of the mystery that seems to surround the Department of Family Services (DFS) and Youth Probation. These departments only get involved in cases where a problem already exists, and has been reported by someone. The main goal is always to reunite the family, but all members of the family must want to be reunited or it cannot be done. This is sometimes difficult when older children are involved.

Youth Services is located in Billings and is a placement facility for people who are under 18 years of age. There are two "sides" to the facility. One is referred to as "lock-up" and the other is the "open side." Those who have committed felony offenses, are determined to be dangerous, or are a flight risk are placed in lock-up, also known as detention. The open side is used for placement of those who cannot be placed elsewhere for a temporary period of time, but are not "locked up" and can walk out the unlocked doors at any time. There are consequences if they do walk, but they are not locked up. The Youth in this case was on the "open side" and the outing Mr. Lekse complains was denied to him was due to reasons I am not free to discuss because of confidentiality restrictions.

I want to thank everyone who supported me and asked me to run for County Attorney again. I tried to explain as best I could why the job was just not worth it. Everyone who read the slanted, inaccurate, and vicious letter written by Mr. Lekse in a father's CYA will hopefully understand now that it was numerous cases like this that influenced me to not run again, and why it is so very hard to get people to stay in the public services jobs he attacks. Wouldn't life be better if everyone took responsibility for their own actions instead of just blaming everyone else? And we wonder where our children learn it!?!
/s/ Vicki Knudsen

OPINION & LETTERS PAGE

To the Taxpayers of Musselshell County:

Do you know what is going on in your community when it involves your children? Here is an incident that happened to me a couple of months ago and I feel it is time these kind of things are brought to people's attention. After all, it is our tax dollars that are paying these people's wages. Don't you think we deserve better treatment than this? I do...

On Saturday, November 12th my fiance's daughter, Kara, called our home and asked to speak with her Dad. Her Dad was helping with the Rotary Auction, so Kara and I visited for quite some time on the phone. You see, Kara was placed in the Youth Services Facility in Billings by Mrs. Donna Marmon, Youth Probation Officer, and Mrs. Vicki Knudson, County Attorney, the end of October. In our conversation, Kara mentioned that she was in need of some money and Mrs. Marmon was coming over to take her to the Girls Basketball Tournament that evening. Kara asked if I would call Mrs. Marmon and arrange to get the money to her. Not knowing whether or not Mrs. Marmon had already left for the game, I called her home to explain our situation and see if she would help. Before I could explain the whole conversation, Mrs. Marmon rudely and belligerently INFORMED me, "You DO NOT have telephone privileges and I will not talk to you." The phone was then slammed down on the receiver. I tried to call her back immediately, in hopes of obtaining her help, and all I was able to get was her answering machine.

I have two children of my own ages 18 and 21. I know their needs haven't always happened between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday. I have always been led to believe a probation officer's job was to help a family who's child was in need; whether it was 3:00 p.m. or 3:00 a.m.

After this exchange a lot of questions have crossed my mind:

* Since when does a citizen need to be granted "telephone privileges" to talk a youth probation officer—especially since the child involved is a family member?

* Isn't it the duty of the Youth Probation officer to work with the parents and/or step parents, as well as the child, to help the child get back on the right path in life?

* Why was I treated so rudely? Mrs. Marmon was going to see Kara anyway. Was I asking too much when I needed her to take money to her?

* If Mrs. Marmon treats me in this manner, how is she treating children and young adults in this community?

* What have I ever done to Mrs. Marmon to deserve treatment like this?

* Is the Youth Probation Officer position a 5 day a week 8 to 5 position?

* If a child gets into trouble, must it be between 8 a.m. and 5 p.m. Monday thru Friday? If so, shouldn't all the children/young adults in this county be given a set of rules to follow so they are sure not to need the Youth Probation Officer between 5:01 p.m. and 7:59 a.m. each day and, heaven help them if they get in trouble on the weekend! Guess they will just have to sit it out in jail until Monday morning because the probation officer is only available 8 - 5 Monday thru Friday.

* Because I am engaged to Kara's Father, why couldn't I talk to or go see her while she was in the Youth Services Facility? Why was Kara able to call me, however, I couldn't call her. I never did anything but try to be a "mother" figure to her after her own mother walked out on her

when she was 11 years old.

If anyone in the community can answer any of the above questions I would love to talk to them. Obviously, I cannot go to Ms. Marmon even though they do involve her position, because "I do not have telephone privileges." Or, if someone in the community is authorized to give me these privileges so I could speak to Ms. Marmon, I would be greatly indebted to them.

Just for the record, I would not know Mrs. Marmon if I met her face to face on the street. They say a first impression is a lasting impression. If this turns out to be so, she and I could be off to a very bad start. The only things I may be guilty of are:

* falling in love with Kara's Dad, Larry, and accepting a proposal of marriage from him;

* making a house into a home for Larry and his family;

* good home cooked meals and another adult for Kara to come home from school to ask for guidance to everyday problems and situations;

* offering Kara and her brother Jason the same kind of love, affection and respect I have given my own two children; and

* making plans with my future "step-daughter" to take riding lessons from her in exchange for my teaching her how to cook, sew and use a computer.

Karen Kowalczyk

Dear Editor:

I guess I should respond to the letters that have all been written about ME!!!!!! It is really sad when EVERYONE has to talk about me. You know I am a human being NOT ROUNDUPERS. It would like to clear up a few things that were in my father's letter and Vicki Knudsen's letter.

I can start I would like to say that my mother did NOT abandon me. She felt that she could not take me to a new school in a town of 100,000 people when I was 12 years old and I agree with her. I would have probably felt abandoned if she would have taken me seeing that she was starting over again.

I did not have a perfect little family life at my father's home. No one can tell me that when someone tells their own daughter that they are a slut like her mother and another incident where someone puts a dead butterfly in your hand and tells you to take your things home with you. That is trying to be a mother figure. And in regards to Karen's letter my mother (the I said I did) did not walk out on me. We're not trying to get at your mother. I think only two people in Roundup know that I am talking about. My mother is only supported my decisions and encouraged me to change for the better. My grades are now up and it looks like I will graduate with an approved opportunity to go to college.

In regards to my personal belongings my daybed was bought by my mother when she was living in Billings. The telephone was also bought by Mom for Christmas one year. The television was given to me by my mother and my mom for Christmas. My brother also received an exactly like mine for that Christmas. I bought my horse, Sonny Mount, was sent to me for my 14th birthday. I sent but I guess I was mistaken.

The piano is my biggest gripe. None in Roundup that knows me says that I have played the piano ten years. My mother bought the piano in 1979. In fact I believe that Larry Kowalczyk helped move the piano into our old house on 1st Avenue West.

The day I went to the police station my father and I didn't just have a little argument, or I would not have said. If you put me back there I will

I know my mistakes and I have come to terms with my problems. I never said that I was perfect. In fact I have done some pretty stupid things but I will admit it. I am reasoning behind dragging my life story through the Roundup paper when all the people that have cannot even admit their mistakes. I will take part of the blame for this but I won't take all because I have changed my life around for the better. What have they done?

I even feel stupid for getting in the mud and slinging around with the rest of the pigs but I feel like I must defend myself. I hate sinking this low. I would like to thank some of those people who have been behind me, including the Saunders family, Snider family, and the Ken Lekse family. Thank you for being with me through the hard times. I could not have made it without all of you.

Out of all the family service or deals that I have gone through, I think Donna, Marmon and Betty Goffena did the best job they could, so I would appreciate it if everyone would stop beating them up. I may not agree with everything they did but I do think they had me in mind, not their personal life or reputation. To the Youth:

Please listen to what is being said. Stay out of trouble and do well in school. You're not 18 years old. That day will come but let it come don't hurry it up. Your main goal should be school. Not parties, or boyfriends, or girlfriends, or sex. If you plan to go to college, you had better know that it gets tougher and you had better be prepared. I wish I could take five years away and start over again. Things would change for me. How often can you figure out how many times you went up, main and down main when you could have spent that money to buy something worth value instead of gas? I don't even have a car here and I work on top of going to school. To the Community:

Now that I can stand back and look at Roundup in a different way, I think that the youth are going down hard. I'm sorry to say this and not

To Vicki:

You have a foul mouth. You should have remembered on that day of October 29 and on the day before that you were an officer of the court. I am suppose to look up to you or respect you as a role model? Not when you are in my face about one daughter's basketball game and the other's waterbed. If you would like, I can give you the names of three people, including a sheriff's deputy, that were there on October 29 and that heard you and your foul mouth!!!! Don't talk about "And we wonder where our children learn it?" and

"Wouldn't life be better if everyone took responsibility for their own actions instead of just blaming everyone else?" Do you have a personal conflict or what???? And by the way I do not hide people underneath the stairs.

Both my mother and father know that I am writing this letter and they have no quarrel with it. They have not influenced me either, for, these are my feelings. I would appreciate it if my personal life was not discussed in the paper and that this letter be the end of it. I don't care if other people are discussed but I am a 17 year old girl trying to get my life straightened out and I didn't need this disturbance.

Kara Lekse

OPINION & LETTERS PAGE

Letters

Editor:

ver the past several weeks I have followed the discussion of the Selshell County Department of Family Services with much interest and some amusement. It is almost amusing to see what some people will pass off as the truth in an effort to save face, especially in small communities. However, "facts" and good common sense have been so perverted concerning some of the people incidents involved, I find it necessary to respond, in fairness to those who can't. Issues of professionalism and confidentiality that govern some people's lives obviously do not apply when parental damage control and coffee house reputations are at stake.

Mr. Lekse and his latest girlfriend, through their letters to the editor, have placed what should have been a confidential youth proceeding into the public forum. This is highly unfair not only to his daughter, but also to the many people who worked hard to help Kara when she left her loving home" and flatly refused to turn. Kara informed everyone involved with her case that if she were ever placed back in her father's house, she would run away. This did not result from some one-time discussion about her dog on an isolated occasion, as Mr. Lekse would try to have you believe. This incident was simply the straw that broke the camel's back for Kara and she made

a difficult (and very wise) decision to seek help.

Mr. Lekse and his girlfriend state in their letters that Kara's mother "abandoned" or "walked out on her" some seven years ago. I found it interesting to witness Kara's response to these particular comments. She could hardly wait to get her dad and his girlfriend on the phone to give them a piece of her mind, and did she ever. Incidentally, her father has lied to her, other family members, and the community for years about her mother not paying any child support. According to the public record, Brenda paid in excess of ten-thousand dollars up front, a fact of which Kara and her brother are now well aware of. The ultimate irony is that Kara's father is having to return a portion of that support he lied about for so long, plus a matching amount of his own, to Kara's mother every month. Crow isn't all that bad with a little salt and pepper is it, Mr. Lekse.

Without going into a lengthy point-by-point discussion of Mr. Lekse's so-called facts, which I could easily do, I will simply summarize my experience and feelings concerning this whole affair. Once Kara decided she no longer was willing to live in the house with her father and his new "friend" she became a ward of the State of Montana. Since she refused to return home, especially after her father blew up and walked out of a meeting arranged by DFS (a meeting arranged at the suggestion of Kara's mother) certain actions needed to be taken by the state. One was to place Kara with Betty Goffena for temporary foster care. This was agreed to, in writing, by both of Kara's parents. When this situation became unworkable, her mother and I were immediately notified that Kara would be placed in the Youth Facility in Billings.

Contact Kara's limit the Youth Probation Officer so she could make the difficult adjustment to the group home. At the request of everyone involved, Mr. Lekse's girlfriend was not allowed to call or visit Kara. On several occasions contact by her father upset Kara and was discussed as an ongoing problem, but he was never cut off from calling her. The "three wise people" had frequent discussions with Kara's mother and myself concerning Kara's future placement, and we maintained daily contact with Kara and Donna Marmon. Additionally, Mrs. Marmon made herself available to us at any hour of the day or night, whether in the office or at home. We were informed, and agree, that returning Kara to her father's house, or Roundup for that matter, was out of the question.

Contrary to what Mr. Lekse would have you believe, the Youth Probation Officer has not set "rules" for Kara to live by except those that are established by her mother and I. She is required to contact Mrs. Marmon every other week which she does by faxing her on our home computer. As to whether the "three wise people" ever discussed Kara's case among themselves, I was a party to many discussions with all of them. On occasion, they were all in the same room on a speakerphone.

Kara has gotten a grip on her life since leaving her father's house and is doing very well in her new home, school and job. She was failing several classes in Roundup, receiving three F's on her first semester report card from RHS. Given her situation, she was not going to graduate with her friends, as her father tries to claim.

She has completely turned her grades around here in Boise, receiving three B's and two C's on her semester report card, along with comments like "she is a pleasure to have in class." Her father has been provided with copies of both progress reports. Kara will still need to attend school until next January to graduate and is considering attending the whole year to raise her grades in order to get into a good college.

In closing, I would like to commend DFS and especially Donna Marmon for doing an outstanding job with a difficult situation. Thanks also to Floyd Brower and Vicki Knudsen for their part in helping Kara. An extra special thank-you from Kara, her mom and myself to a wonderful friend of all of ours who visited Kara every day while she was in Billings. These visits did more for her than anyone will ever know.

If the mission of the Department of Family Services and the Youth Probation Offices is to help kids in trouble, who find their home life impossible to cope with any longer, then this exercise has been a success. It was not easy, and some of the people involved were not always right or even professional at times, but an honest effort was made and a kid was rescued. In the end, isn't that what really matters?

Bill Brockett
Boise, Idaho



N A S W

EXHIBIT 6
DATE 3/8/95
SB 206

MONTANA STATE CHAPTER

National Association of Social Workers

555 Fuller Avenue

Helena, MT 59601

(406) 449-6208

Members of the House Judiciary Committee,

Please consider this additional testimony on SB 206.

SB 206 *as introduced* attempts to address concerns certain families have had with the administration of duties of child protection by the Department of Family services. While DFS handles tens of thousands of child protective service cases over the years, it is surprising that the number of complaints is not larger. Their work has perhaps among the most difficult and heart rending day to day decision making any public servant could be asked to do. Their dedication and consistency should make Montana proud.

Nevertheless, not all workers are exemplary, and the amended form of SB 206 the Senate has passed offers an additional check on this process.

SB 206 *as introduced* also tried to prevent redress for "interference with families" by criminalizing child abuse, neglect and endangerment. This would make it virtually impossible to temporarily protect a child and provide a proper treatment plan for the family. We must not sacrifice are children on the presumed altar of "rights", when these "rights" are based on perceived public opinion and not based on the constitution or Montana Law.

In attempting to offer parents additional rights of "due process" it criminalizes child endangerment and neglect as well as abuse. By so doing, this bill may inadvertently penalize children and parents by preventing DFS from actually being able to provide treatment to the family *as a whole* in their homes.

There is a sentiment that the pendulum of concern- erring on the side of child protection- now has to swing back- to err on the side of protecting family rights.

This is not unavoidable. The degree of the "swing" can be dampened.

There is a claim that overzealous protection of our children has needlessly violated the rights of too many families. There is an element of truth to this, but the degree of the problem is difficult to identify and MUST be kept in its proper perspective if we are ever going to have hope of achieving the proper balance.

The question is HOW we address the problem. We must prevent the overzealous protection of family rights as surely as we must protect children. That way, we may keep too many children from needlessly suffering and dying. SB 206 as introduced DOES NOT contain the necessary measures to achieve either of these goals. As amended by the senate, and with the passage of SB 270 and SB 271, we have taken some appropriate steps. Let us not attempt to push issues which are a matter of life and death for Montana's children beyond prudence, and into a nightmare.

Please concur with the version of SB 206 the senate has passed.

Thank you, Respectfully yours,

Robert L. Torres
Lobbyist, Mt. Chapter NASW

Statement submitted regarding SB 206

March 1995

My name is Alan Cranford. I am representing the members of the Christian Science churches in Montana. I live in Bozeman with my wife and our five year-old daughter.

Thank you for the opportunity to make this statement. As a rule our church does not speak for or against a bill in its entirety but tries to help any legislation be accommodating to the freedom of religion. Sections of this bill obviously have such an intent and I have an amendment to offer which I think is in keeping with its stated purpose "to restore public confidence in the child protective system and to provide protection of individual and family civil rights as guaranteed by the state and federal constitutions." It is also in line with Senate Joint Resolution 3 which asserts states rights, and with Senate Bill 143 which rejects federal mandates.

In 1993, the U. S. Department of Health and Human Services threatened Montana with the loss of federal grant money for child abuse prevention unless we changed our laws to eliminate the phrase "non-medical remedial health care" from the definition of "adequate medical care" in section 41-3-102. Historically this phrase has protected Montana parents from a finding of child abuse for the sole reason that they rely on non-medical means such as religious prayer to maintain the health of their children.

As a result of the federal mandate, the 1993 Montana legislature changed the wording to the satisfaction of the department. The phrase "non-medical remedial health care" was removed. But, with some help from state senators, representatives, and administrators we were able to preserve some accommodation for our religious practice. With the minor changes under SB 206 the provision now reads as follows: ~~"Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, ~~nothing in this~~ chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child."

The first sentence of this provision accommodates religious rights, but the second sentence could be interpreted as restricting those rights by imposing non-spiritual care against the wishes of a parent. During a time of great need, loving parents should not be made to fear state intervention when they are using a spiritual method of healing which they have proven by experience to be safe and reliable. Christian Science families have been successfully relying on Christian healing for the prevention and cure of disease since before Montana statehood. We are known as responsible, law-abiding members of our communities and we have a well-earned reputation of providing loving care for our children. Our conscientious practice of Christianity does not fit the definition of neglect and should not be associated with statutes which assert the proper state responsibility to protect children from the harsh human condition of abuse and neglect. Parents who practice spiritual healing are not the problem.

Our church members would like to have the provision returned to its original simple language so that our prayerful method of care cannot be mistaken for child abuse. In our proposal the 1993 provision under Section 41-3-102 (3) (b) would be deleted and the previous paragraph would be changed to read, "Adequate health care" means any medical or non-medical remedial health care...."

In our view, the Department of Health and Human Services exceeded its departmental authority, violated the intent of Congress regarding the Child Abuse and Treatment Act of 1974, and acted contrary to the Religious Freedom Restoration Act signed by President Clinton in 1993. Other states have been targeted by HHS, but most states resisted this pressure to conform, saying that they were being asked to fix something that wasn't broken. California sued HHS when the department threatened to withhold funds--and California won. The Federal Court found HHS "arbitrary and capricious." Last summer, Congress stopped the department from threatening any more states, and some states have already restored their original provisions.

The Christian Science church supports the right of parents to make responsible choices for their children's health care. We agree that every child must have access, if needed, to the protective services of the state. However, the government does not need to weaken or eliminate religious provisions to do this.

In a related section of SB 206 regarding the reporting of child abuse, Christian Science practitioners are listed as among those required to report. A later paragraph in this section states that "a member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice."

We would like to recommend that this paragraph be revised to include a Christian Science practitioner as one not required to report for reasons of confidentiality. We are a church of laymen. We have no ordained ministers. A Christian Science practitioner is the closest thing we have to a minister, in fact the work is referred to within the church as a healing ministry. Our church's governing By-laws require all private communications to practitioners be held in sacred confidence.

Article VII, Sect. 22, entitled, "Practitioners and Patients" reads in part, "Members of this Church shall hold in sacred confidence all private communications made to them by their patients; also such information as may come to them by reason the their relation of practitioner to patient. A failure to do this shall subject the offender to Church discipline." We feel this By-law fits the requirements of the statute and that it should be amended to read as follows:

Section 41-3-201 Reports

(4) (c) "~~A clergyperson~~ member of the clergy, a Christian Science practitioner, or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice."

Your careful consideration of this request for an amendment is sincerely appreciated.

Alan Cranford
Christian Science Committee on Publication
for Montana
314 N. 16th Avenue
Bozeman MT 59715
585-7601

JUDITH MOUNTAIN COUNSELING

EXHIBIT 8
DATE 3/8/95
SB 206

(406) 538-2976
By Appointment Only

John R. Foster, LCPC, NCC, CCMHC
National Certified Counselor
Certified Clinical Mental Health Counselor
Montana Licensed Clinical Professional Counselor

Office: Suite 504, Montana Bldg.
Lewistown, Montana 59457

Mailing Address: P.O. Box 594
Lewistown, Montana 59457

MARCH 7, 1995

HOUSE JUDICIARY COMMITTEE
Capitol Station
HELENA, MONTANA 59620

RE: SB 206
SB 270
SB 271

Dear Members of the Committee:

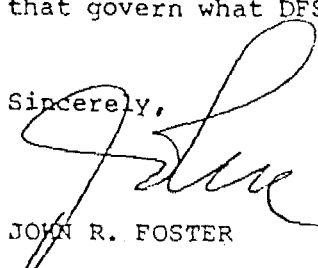
Senator James Burnett has introduced ^{SB} ~~SB~~ 206 (plus SB 270 and 271), which deals with reform of the DEPARTMENT OF FAMILY SERVICES and their treatment of CHILD ABUSE or ALLEDGED CHILD ABUSE. SB 270 and SB 271 deals with the same issue.

I support all three bills.

ENCLOSED PLEASE find copy of my letter to the SENATE JUDICIARY COMMITTEE supporting SB 206 over there. No sense in duplication. MY REASONS FOR SUPPORTING ARE STILL THE SAME.

DFS has abused many innocent people, and I think we need to tighten up the rules that govern what DFS is doing. I think Senator Jim Burnetts bills will help.

Sincerely,


JOHN R. FOSTER

enclosure

COPY: Representative Larry Grinde
Representative Dick Knox

JUDITH MOUNTAIN COUNSELING

EXHIBIT 9
DATE 3/8/95
SB 206

(406) 538-2976
By Appointment Only

John R. Foster, LCPC, NCC, CCMHC

National Certified Counselor

Certified Clinical Mental Health Counselor

Montana Licensed Clinical Professional Counselor

Office: Suite 504, Montana Bldg.
Lewistown, Montana 59457

Mailing Address: P.O. Box 581
Lewistown, Montana 59457

FEBRUARY 6, 1995

SENATE JUDICIARY COMMITTEE
Capitol Station
HELENA, MONTANA 59620

RE: SB 206

Dear Members of the Committee:

SB 206 comes up for hearing on February 6th before SENATE JUDICIARY. I do fully support the bill, as introduced by SENATOR JIM BURNETT.

Two years ago when Senator Burnett brought up a similar bill, I testified for same in the committee. It seems like a hundred were there testifying for it -- most of them victims of the DFS or aware of atrocities committed by the DFS against innocent people. Unfortunately, nothing was done and the bill was tabled in committee.

AGAIN THIS YEAR, Senator Burnett again brings a bill (SB 206) before the Legislature. THIS TIME LETS PASS IT!! I SUPPORT IT FULLY.

I am a therapist in private practice, and I have seen people abused by the DFS numerous times. In summary:

- A) IT SEEMS LIKE THE PEOPLE ACCUSED OF ABUSING THEIR CHILDREN HAVE NO RIGHTS AS GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (and Federal Bill of Rights). I think they should have every right as guaranteed by the citizens in all other matters. This bill does that.
- B) This business of people calling in to the DFS, and accusing others of abusing their children, and NOT HAVING TO TESTIFY TO SAME IN A COURT OF LAW, must stop. We have a host of people who do this out of spite - it is common in divorce and domestic abuse cases - and many kids have been pulled unjustifiably by DFS personell on gossip - spiteful gossip - alone. This bill does that.
- C) CHILD ABUSE should be defined. The current law is VERY VAGUE. Actually, child abuse is whatever any welfare worker thinks it is at any given time in any given place. This bill does not deal with this, but it might be a good task for the committee. Making something illegal that we cannot adequately define ought not to be done.
- D) If a child is in protective custody of the DFS, then the DFS should pay all of the childs bills. This bill does that.

SB 2, 1995

-2-

FOSTER to SENATE JUDICIARY

1.) The DFS should have no power to settle these accusations of "child abuse" out of court. I have known people accused whom I believe were not child abusers, who opted to go to therapy and special classes on how to raise kids (at their own expense), and in the process resented the intrusion and went bankrupt trying to pay the extra bills. THIS IS NOT FAIR. Therefore, I have no objection to making CHILD ABUSE a CRIME. Thatway, the accused will at least have some rights. IF IT IS WORKED OUT SO IT IS NOT A CRIME, THEN THE ACCUSED OUGHT TO HAVE JUST AS MUCH RIGHTS AS A COMMON CRIMINAL, including the right to a decent defense.

WE NEED ADEQUATE LEGISLATION and a good DFS staff to protect abused children, to that fact I have no doubt. MUCH OF WHAT I HAVE SEEN over the past several years is overzealousness by the DFS caused by gossips reporting child abuse, DFS personall who are not trained well enough to do a good job, and many people who are totally innocent "wrung through the wringer" of dispair by the DFS under allegations of child abuse. THAT MUST STOP. This bill does that.

THIS MUST STOP and I hope this bill passes so innocent people can be protected.

IT SEEMS TO ME that many (if not all) of those accused by the DFS of child abuse are GUILTY until proven innocent. IT SHOULD BE THE OTHER WAY AROUND. This bill provides for INNOCENCE until proven GUILTY in a competent court of law. THAT IS THE AMERICAN WAY.

that would
legislature,
ADDRESSES THE ISSUES

RAISED BY SENATOR AKLESTAD two years ago.

THERE HAS BEEN FAR TOO MUCH ABUSE by the DFS to innocent people all over Montana. This must stop. WITH THE PASSAGE OF SB 206, I do feel the most of the problems will be solved.

Sincerely



JOHN R. FOSTER

cc: Senator Jim Burnett
Senator John Hertel
Senator Gary Aklestad

PS: In one section of Welfare law, it says the client (or accused) must go to a therapist or counselors or psychologist of the "DEPARTMENTS CHOICE." This should be changed to "the clients choice." Lets have freedom of choice of practitioners. THAT IS THE AMERICAN WAY.

Representative Robert Clark
Capital Station
Helena, MT 59620

EXHIBIT 10
DATE 3/8/95
SB 206

Re: Passage of Senate Bill 206 in it's entirety

Dear Bob;

This is in reference to Senate Bill 206. You have heard from me before and so you know the nightmare that my family and I were put through. It's a long and heartbreaking story so I will not go into it again. Please refer to my letter dated February 3, 1995.

As you are probably aware The Department of Family Services, as it stands right now, has too much power. They are not made to be accountable for any of there actions in what they call keeping the family together. It has been my experience that this is not what they do or even try to do.

If Bill 206 is put back to the original form this would make DFS be accountable and prove "beyond a reasonable doubt" that someone is abusing or neglecting their children. As this bill stands with all the corrections and omissions it is right back to the way it is right now. We need this changed. A lot of lives have been ruined over rumors. Lets stop it before anyone else gets hurt. If there is really a problem then the Department of Family Service would not have any trouble in proving the claims.

A tax payer that knows what happens to families from experience.



Debbie Hannum
423 3rd Street East
Roundup, MT 59072

EXHIBIT 11
DATE 3/8/95
SB 206

Representative Robert Clark
State Capitol Building
Helena, MT 59620

This is with reference to Senate Bill 206. This bill as originally written was the answer to the multitude of problems that are presently and continually going on with the Department of Family Services Departments.

I have been personally but indirectly involved with the pain and humiliation that very good friends have been put through being involved with this so called system. Not wanting to drag this out into a complete horror novel, it is enough to say these people have been drug through hell and back several times through what I consider to be complete mis-use of authority of the DFS and also the Judicial System, such as it is.

If something isn't done to stop this completely insane situation there will be countless more people, not to mention children, that will be totally destroyed by this ridiculous system. This Bill, as it was written was, I feel, a great step in the right direction. The way it has been amended, or hacked up, is the craziest thing I have seen yet. Is there no way to stop these people from destroying peoples lives?

I therefore, as a very concerned citizen of the United States, and a firm believer in the U.S. Constitution, say this madness has got to be stopped. I urge anyone with any power to pass this Senate Bill, as originally written before more damage has been done. Most of the damage is irreversible but maybe we can save someone else from the insanity that is going on with the way the DFS is now operating.

A concerned tax payer residing in Musselshell County

Karlene Johnson

Karlene Johnson
1215 - 1st St. East
Roundup Mt. 59072

EXHIBIT 12
DATE 3/8/95
SB 206

Representative Robert Clark
Capital Station
Helena, MT 59620

Dear Bob;

As you know our family was put through hell over a situation with the Department of Family Services, so I will not go into the whole story.

We went to Helena when Senate Bill 206 was introduced as we were in complete support of the changes that need to be made in the DFS policies. We still feel that DFS needs to be made accountable for their actions just as we all have to be accountable for our own. Please encourage anyone involved in the passing of this bill to pass it in it's original format. With all the corrections that have been made to the original bill it seems to us to be back to the way things stand now. If DFS was made to be accountable we would not be depleting the monies that could be going to people or Departments that the funds were originally designated for such as Social Security. Let's put the burden of proof on DFS and put the monies that they receive toward keeping the families back together. Everytime the Department of Family Services rips off someone children they are just justifying their jobs and a long list of others. Let's keep the families together and quit spending all this money on foster care. **Let's give the people back their constitutional rights and Stop DFS from playing GOD.**

Please encourage the passing of this bill in it's original form. If you need any further assistance from us in the future on this bill, please feel free to contact us.

Mr. & Mrs. Gerald Bartow
217 4th Ave. East
Roundup, MT 59072

Gerald Bartow
Mrs. Gerald Bartow

EXHIBIT 13
DATE 3/8/95
SB 206

5

STEPHEN C. MOSES
Attorney at Law
P.O. Box 23337
Billings, Montana 59104
Phone: (406) 259-5804

February 2, 1995

Re: Senate Bill 206

TO WHOM IT MAY CONCERN:

I am a practicing attorney in Billings, Montana. The power of DFS has caused me great concern. It is important that there be an agency that protects children, but not dictates the decisions of parents. As we are all aware, there is no blue print on how a child should be raised. We all do the best we can with what we have to deal with. No one wants the tragedies that occur, and few deal with them as much as DFS. However, DFS has taken the position that they can decide the fate of children and in the name of children, rip families apart.

I have had DFS file papers and take children that are only a day or so old. The basis is that in the past the mother was a problem. She has no other children, but because her life was difficult, she will abuse any child she might have. Taking the child is the only thing the department knows. They prepare an affidavit, present it to a busy Judge who signs it as following the statute, and the parent is left alone, confused and facing serious allegations, having never had even the chance to establish herself as a good mother. In the cases I have had, the child was returned and the mothers have turned out to be quality mothers.

Older children are pulled from their family because the single mother, working to make ends meet, doesn't have a spotless home, or has a poor choice for a boyfriend, or simply can't provide the things "normal" kids have. Bad parent, probably not. But the Department takes the child, imposing a far greater burden on the parent. Isolation, foster parents who can provide more material things, and refusal to provide information to the parent leads to distrust and hatred. All this based on an affidavit carefully prepared to have the correct allegations to establish a prima facie indication of abuse. Judges schedule 10 minutes for the hearing called for in the TIA. Most parents are confused and only want what is best for the child. Only a small percentage fight the TIA, believing the Department is there to help. The Department has little burden to maintain total authority over the parent. Visitation is almost non-existent. Parents who insist on seeing their children are labeled trouble makers. Only then do they come to seek an attorney

If family is important, and it surely is, then the Department needs to change its child snatching tactics. Most problems can be worked out with the parents while the child is left in the home. Few problems involve violent threats to the child. If that is the case, the criminal statutes and bail conditions can keep an abuser away. The child does not have to be torn from their home. The innocent parent, who may not know what is happening, does not have to be punished. In this situation, the abuser wins, not the innocent parties. DFS helps the abuser obtain what they want, misery for the family.

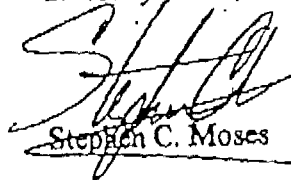
When a child is taken, the child usually feels they have done something wrong. The Department helps this feeling by keeping the child out of the house. Children understand punishment. If they can't see mommy or daddy or both, someone is being punished. Their entire value system is destroyed. Most children will contact their parents, even if the Department tells them not to do so. If there are problems, helping to work them out while the child maintains their support system in the family, is far better for the child than ripping them from their home. A bad parent, under supervision, is better than no parent at all.

As I understand the bill, the Department will have to establish beyond a reasonable doubt that there is abuse and neglect. Access to records and documents will be provided. Both are very good things. The vast majority of parents are not dangerous to their children and not guilty of abuse or neglect. The key, however, is keeping the family together. This is something the Department has failed to do.

I would urge the passage of this bill and next session a complete overhaul of the system. If the Department had to keep the families together, the costs would be reduced, the focus could be on family counseling and people would be more agreeable to working with the Department.

If I can be of any assistance, please contact me.

Sincerely Yours,



Stephen C. Moses

Martha Adolph
#4 Camp 3 Road
Roundup, MT 59072

Representative Robert Clark
Capital Building
Helena, MT 59604

March 6, 1995

Dear Representative Clark;

I am writing this letter in the interest of my daughter's and all the other children that I hope will be helped by Senate Bill 206.

My daughters were removed from my home on November 22, 1993 for neglect. The Department of Social Services had received a call that my girls ages then 16 & 13 were being left alone. The Department removed my girls and let them stay with friends until Monday when I went into the office and signed the necessary papers to place them in Foster Care. I signed these papers because I was told I did not have a choice, that the girls would be taken either way.

I was very cooperative at the beginning of this nightmare. I started a chemical dependency program, that was in my TIA stated I needed to do. I was unable to complete it because I did not feel comfortable in a group setting. I went to the Social Worker and also the Counselor and asked if I could do this on a one on one basis. I was told and I quote "If you want your kids back you'll finish this class, otherwise you can kiss them Goodbye". Since the others in the group didn't keep things confidential, I didn't want to discuss the issues that I had with them. Because of this I never went back. Then my visits with my girls were getting cancelled time after time for various reasons and then I was told I could no longer see the oldest one at all. I have not seen her since June 28, 1994 and that's tearing me apart because of the closeness I felt with my daughters. I felt then and still do now that the Department was making me choose one daughter over the other.

Now yesterday, January 31, 1995, was the day I was suppose to see my youngest daughter. I have also been requesting to see my oldest daughter. I picked up the phone and called the Department to find out before I went to see if my oldest daughter was going to be there for the visit. The secretary told me she would have Vicki, the social worker, get back to me. Vicki Fawcett, the case worker returned my call and asked if I had received her letter. I said I had not and she proceeded to then inform me that the visits have been stopped. I was shocked. Why I asked? She said it was because the visits are non-productive. I said they would be productive if you would let us talk, but you don't. Vicki then reminded me that I had refused to sign two (2) treatment agreements and we would be going back to court soon and this time Vicki said it's not going to be for the TIA to continue, it's going to be for permanent custody. I told over my dead body are you getting custody of my girls. Then Vicki told me that the abuse charge still stands.

You see DFS is charging me with abuse because 12 years ago the girls were molested by a family member, who was also a child at the time and because I didn't remove the girls from the home they say I did not protect them and I still can't protect them for that happening. I have left that home which was in Colorado and moved to Roundup to try and start a new life for myself and my girls but what happened in the past is still haunting me. At this time Vicki stated that she had another report come into her office that I have been in contact with two (2) other children and I was endangering these children because my girls were taken for abuse. Never have I been told that I could have no contact with children. Well I didn't have to ask who made the call I already knew. It was my new husbands ex-wife. She was mad at him so to get back at him she made a call to DFS. The Department doesn't check out these rumors, they take everything they hear and turn it into whatever they want. The credibility of the people that call are never checked out. In most cases that I have heard of it seems like you are guilty no matter what you say. I am so hurt by all of this. I love my stepchildren like my own. I would never hurt these children or any other child for that fact. This is not only punishing me but also my husband. He doesn't deserve this, his children don't deserve this and neither do I.

Because of another false report I still feel this is one of the reasons I lost my visits. One other is because I'm speaking up. The Department wants you to be quiet and be led around by the nose. I wrote to the Governor and also wrote a letter to the editor of our local paper and The Billings Gazette. These letters were used against me in court. I was told that I was an unfit mother and should never have my girls back. This was told to me by the girls Guardian Ad Litem

I am being told over and over that the whole purpose of the Department of Family Services is to bring families back together but all I see in my case and many others is that they tear them apart and never intend to help reunite these families.

Maybe these social workers don't understand what it does to mother to be separated from their children and I wouldn't wish it on my worst enemy. I cry at the drop of a hat. I've had to quit two (2) jobs because I couldn't work around all the meetings, classes and whatever else it was that DFS came up with for me to do. I still get up in the mornings and go to wake my girls. When it's time for them to come home from school I still hear them saying "HI, MOM, I'M HOME. It's been so long since I heard them really say anything of any importance, because they are afraid to talk in front of the social worker. They don't want to get in trouble or want me to get in trouble for something they might say. I try to tell them this isn't their fault but I can see it in their eyes that they don't believe me. They think since they got taken away that they must have done something wrong. My girls are being hurt too. My oldest one has been tested for everything under the sun including HIV. I'm sure that is very scary when your mom isn't allowed to be there to hold your hand and support you through all of it.

I just want my girls home with me so I can start to heal the wounds that all of this has caused, not only for myself but also for my girls. I know I can't stand the pain of being away from them so if I feel this way, I know that my girls are hurting. I have a big whole in my heart and that won't go away until my girls are home where they belong.

So please get Senate Bill 206 passed. Make DFS be accountable for what they are doing.

Take to power away from them and put it back into the hands of the law. Right now the way it stands, DFS has way to much power and they abuse it over and over again.

Thank you for your time in listening to my case and for trying to stop these kinds of nightmares before they happen to someone else.

I'm just one MOTHER OF MANY WHO WANTS HER CHILDREN HOME.

A handwritten signature in black ink, reading "Martha Adolph". The script is cursive and fluid, with the first name "Martha" and last name "Adolph" clearly distinguishable.

Martha Adolph

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/8/95

BILL NO. SB 206 SPONSOR(S) Sen. Burnett

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
KAREN KOWALCZYK Karen Kowalczyk	self	X	X
LARRY LEXSE	self	X	X
Mary Alice Cook	adv. for MT's children		X
Laurie Kentrick	Christian Coalition	"no-pone"	original
Steven Shapiro	MT Nurses Assn.		X
KENNETH E. HAUGEN	SELF	X	
Michael V. Billedeau, Jr.	self	X	
Kate Cholewa	MT Women's Lobby		X
Joan-Neel Macfadden	State Family Services Advisory Council		X
Robert Torres	Mt. Chapt NASW		X
Alan Cranford	Christian Science churches		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

REP. KOTTEL stated that on original HB 597 there was an appropriations section which asked for \$25,000 for grants to the 56 counties for implementation, but that HB 311 had no similar appropriations. She asked if he would be willing to put another appropriations section in HB 311 at approximately \$1,000 or more per county so that they could implement it without an unfunded mandate.

REP. WELLS answered that he would consider some amount of appropriation to be appropriate. He did not know what amount should be set and wanted to consult with others to do that.

{Tape: 2; Side: A; Approx. Counter: 39.2}

Closing by Sponsor:

REP. WELLS reiterated that the attempt was to arrive at a procedural bill which would provide guidelines to local governments and to alert them to incorporate in their planning the kinds of things they were seeing arise in these issues. He rebutted comments made by the opponents about public safety and toxic waste burning which he said were addressed in current law and this bill would not change that. It would only protect persons to do legitimate things with their property rather than giving permission to do anything they would like. He said the bill did not address job rights as was contended in testimony, but only property rights.

EXECUTIVE ACTION ON SB 206

Informational Testimony: EXHIBIT 9 was offered as requested information.

Motion: REP. KOTTEL MOVED SB 206 BE CONCURRED IN.

Motion: REP. MC GEE MOVED TO AMEND BY RESTORING SB 206 TO ITS ORIGINAL FORM.

Discussion: REP. KOTTEL said one of the reasons for the Senate amendments had to do with the confusion in the bill concerning criminal law. The original bill confused the issue of criminal law with taking protective measures having to do with children in the civil arena of child neglect. She made general comments regarding the difficulties and potential dangers to a child when the child could not be removed from a home until a criminal trial was completed and cited a case to support her viewpoint. She could see no other place in the law which allowed the defendant to have ongoing contact with the victim thereby potentially influencing the victim's testimony. Her concern was that this would be an effort to swing the pendulum too far in the opposite direction from where it seemed to now be in order to correct some deficiencies in the current system.

REP. HURDLE asked for the Senate committee vote on SB 206.

CHAIRMAN CLARK gave her leave to go ask for that vote if she desired.

REP. MC GEE said, "There is nobody on this committee that does not love children. There is no one here that does not love children. I have three children and I love them with all my heart and I know you guys do too. So, the question here is where is the pendulum and where should it be." He further said his concern with the bill as amended and the concern that he has had with Department of Family Services (DFS) is "their ability to come in at any time, take a child without any charge against me as a parent." He discussed how this bill could have affected him adversely in his youth and gave personal testimony where the actions allowed by it would have been unjustified because of misinterpretation. He discussed how it could adversely affect families through misapplication. Further, he said, "This is an issue here that needs to be addressed. DFS has gone way overboard. Whenever they can walk in --- I understand what you are saying, err on the side of the kid, okay. And I'm saying, protect the kid, but have a judicial process, have due process for crying out loud. The way the law is written right now, I don't have to see my accuser, I don't have to know who they are, nobody has to say anything to anybody for DFS to show up at the door. There is no credentiality (sic) for their social workers, they can walk in, make a determination on the spot and take your child. I am not going to fight that in court, I'm going to fight it right here in my living room. This thing has to go back to the way it was and if the pendulum has swung too far the other way, then let's amend it from there. But I'm not going to amend it from where it is now, which is clear over here on this side."

{Tape: 2; Side: A; Approx. Counter: 54.7}

REP. DEBBIE SHEA said she could sympathize with his position and told of a personal experience, but she understood the importance of the rule. She said the committee would have trouble relating to situations where parents abuse their children because they come from another background. She felt they should err on the side of the child.

REP. MC GEE said that his problem with it was that they would not ask first what happened when they saw bruises before taking the child. He was concerned about the lack of judicial process.

REP. KOTTEL gave her viewpoint that his statement was not true. She felt that teachers, etc. did the appropriate thing in reporting to the department where trained people could evaluate whether or not to temporarily remove a child. She was sure that there were situations where the department had erred on both sides, but that the bill provided good protections and clarification language. She pointed to line 17 on page 9 as security for the appropriate investigative process and

development of collaborative information for the investigation to continue.

REP. MC CULLOCH said the problem with the bill was that people on the committee knew they were good parents and gave a hypothetical situation which would involve a divorce and remarriage which resulted in suspected abuse by the step-parent and asked how long the parent would want those children to stay in that home and said that was the purpose of the bill.

CHAIRMAN CLARK addressed the statement that the people in the department are trained to spot abuse, but he said that he thought DFS would agree that in some cases their training is lacking, not only in how they operate and the methods they use but also in how to determine that abuse had occurred. He gave testimony of a situation which had been misinterpreted and misdiagnosed.

{Tape: 2; Side: B}

He said that the social workers were not always trained and there had been abuses by DFS and gave another example he knew of where actions had been inappropriately taken based on allegations only. He said this is the type of thing the original bill was intended to stop.

REP. ANDERSON said he would vote for the amendment so that it could be placed in conference committee for re-evaluation by the Senate.

REP. BOHARSKI agreed and urged the committee to act on it.

REP. TREXLER said he could relate similar stories of abuses by DFS and asked for clarification of the effect in the legislative process to add the amendment. CHAIRMAN CLARK explained.

REP. KOTTEL asked if what they wanted was something that met in the middle, but really didn't want the amendment but to proceed in some other way to reach the goal. CHAIRMAN CLARK explained further the reasons for the procedure being proposed.

REP. TASH spoke in favor of the amendment because he considered it essential to amend back into the bill the provision for reporting back into the local community.

REP. ELLEN BERGMAN thought the bill wasn't going to solve anything. She wanted to table the bill because it seemed to be aimed at the whole department. She thought there was another way to address the problems.

REP. LOREN SOFT asked if there was any other way to get it into conference committee. CHAIRMAN CLARK answered that they could amend it in any way to get it into conference committee. There was continued committee discussion about the technical aspects

involved in getting the bill into a free conference committee.
REP. MC GEE withdrew his motion.

Motion: REP. BOHARSKI MOVED TO AMEND TO REMOVE SENATE AMENDMENTS ON LINES 17 - 20 ON PAGE 9 TO RETURN IT TO ORIGINAL LANGUAGE.

REP. BRAD MOLNAR voiced his concern with the process not accomplishing the committee's goal and REP. ANDERSON explained how it would. He thought the risk was not great that it would not end up in a free conference committee and REP. SOFT and REP. MC GEE voiced their concern that it would be addressed in free conference committee.

REP. WYATT spoke about her concern about abdicating their responsibility to the free conference committee in forming the bill according to the wishes of the committee.

Vote: The motion carried 14 - 5. REPS. HURDLE, CAREY, KOTTEL, MC CULLOCH and WYATT voted no.

Motion/Vote: REP. MC GEE MOVED SB 206 BE CONCURRED IN AS AMENDED. The motion carried 11 - 8. REPS. BERGMAN, HURDLE, CAREY, SHEA, KOTTEL, WYATT, SMITH and MC CULLOCH voted no.

EXECUTIVE ACTION ON HB 597

Motion: REP. MC GEE MOVED HB 597 DO PASS.

Discussion: REP. MC GEE stated that this bill was a wake-up call. He said that over time the regulatory authorities and environmental groups have caused the pendulum to swing too far.

REP. TREXLER reiterated the intent of the amendments to retain the bill number but use the language of HB 311. He and REP. MC GEE discussed their understanding of the reason for the bill.

REP. TASH preferred HB 311 with amendments to include the counties. He testified about actual situations which influence his preference.

REP. MC CULLOCH objected to the method in which the bill was brought to the committee.

CHAIRMAN CLARK said that a fiscal note had been applied on HB 597 and explained that they take several days to be provided.

Motion/Vote: REP. MC GEE MOVED TO TABLE. The motion carried 13 - 6 by roll call vote.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/21/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓ 8:15	✗	
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓ 8:00	✗	
Rep. Duane Grimes	✗	✗	✓
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓ 8:10		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 10:30	✗	✓
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 8:15	✗	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 206 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Simpkins

And, that such amendments read:

1. Page 9, line 18.

Following: "hours"

Insert: "within 48 hours"

Following: "independent,"

Insert: "independent,"

2. Page 9, line 19.

Following: "attributable"

Insert: ", and attributable"

3. Page 9, line 20.

Following: "home,"

Insert: "Without the development of independent, corroborative, and attributable information, a child may not be removed from the home."

-END-

March 13, 1995

TO: Richard Kerstein
Division Administrator

FR: Beth McLaughlin
Personnel Specialist

RE: Hiring

I have listed the most recently hired employees including a brief description of each person's education and experience. We are receiving about 30-50 applications for each opening, which has allowed the department to hire highly qualified individuals. The majority of our new social workers now far surpass the minimum qualifications of a bachelor's degree in social work or a like field and at least one year of social work experience.

Position 355
Hill County
Hire date - March 1995
BA - Human Services
DFS internship - 9 months
Rehab Tech - 2 years

Position 552
Gallatin County
Hire date - March 1995
BA - Corrections/Social Work
Senior CPS Worker (CA) - 10 years
Probation Office Intern - 1 year
Police Academy Trainer - 7 years

Position 437
Rosebud County
Hire date - February 1995
BA - Social Work
Youth Counselor - 1 year
Foster Care Management - 1 year

Position 313
Custer County
Hire date - December 1994

Youth Counselor - 2 years
Rec Therapy Ass't - 1 year

Position 285
Cascade County
Hire date - December 1994.
BA - Social Work
DFS internship - 6 months
Shodair Counselor - 1 year

Position 627
Jefferson County
Hire date - October 1994
BA - Social Work
Mountain View Social Worker - 6 months
Senior Case Manager (ID) - 4 years
Case Manager (CO) - 2 years

Position 476
Yellowstone County
Hire date - October 1994
BA - Rehab Counseling
Youth Services Counselor - 1 year
Psych Tech - 4 years
Group Home Supervisor - 6 years
Correctional Officer - 1 year

Position 559
Musselshell County
Hire date - October 1994
BA - Human Services
Youth Counselor - 1 year
Boys and Girls Club Supervisor - 6 months

Position 323
Fergus County
Hire date - September 1994
MA - Education
Juvenile Rehab Counselor - 3 years
Crisis Counselor - 2 years
Senior Therapist - 3 years

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 206

Call to Order: By CHAIRMAN JIM BURNETT, on April 10, 1995, at
10:38 AM

ROLL CALL

Members Present:

Sen. James H. "Jim" Burnett (R)
Sen. Larry L. Baer (R)
Sen. Steve Doherty (D)
Rep. Loren L. Soft (R)
Rep. Richard D. Simpkins (R)
Rep. Matt McCann (D)

Members Excused: None

Members Absent: None

Staff Present: John McMaster, Legislative Council
Karolyn Simpson, Committee Secretary

Discussion: SB 206

SENATOR BURNETT said he wanted to work with the original bill, and wanted the bill to go through in some form, but doesn't want to make it into a form the Governor would probably veto. He recognizes there is child abuse and doesn't want to interfere with the Department of Family Services efforts, but is unhappy with the way the case workers in the field are performing, and wants the Department to more closely monitor their activities.

REP. McCANN asked for an explanation of the intent of the bill.

SENATOR BURNETT said the intent of the bill is bring some accountability to DFS, the case workers, and protect the civil rights of the family.

REP. McCANN asked for an explanation of the amendments put on the bill in the Senate.

SENATOR BURNETT said the House amendments are different from the version of the Senate amended bill. He said DFS indicated during the hearing they didn't understand the meaning of various words, and he wanted to put in some word definitions. He read a list of words and definitions. EXHIBIT 1.

REP. SIMPKINS said this was a Free Conference Committee and would be dealing with the whole bill.

SENATOR BURNETT said he did not want to upset the balance with the Department.

SEN. DOHERTY requested an explanation of the reason and purpose of the House amendments.

REP. SOFT said the amendments were put on so the bill would go to this Conference Committee. He had a list of issues and concerns that need clarification on the bill. He said these were issues that came up both in the Senate and Judiciary Committee.
EXHIBIT 2.

REP. SIMPKINS said the House had concerns about the video taping and said DFS thought some statements in the bill went too far. He told of a problems that had occurred in Great Falls and said DFS has too broad authority, and wondered if there was anything that could be put into the bill to remedy the situation.

SENATOR BURNETT asked REP. SOFT to explain the issues on his list and explain the House amendments.

REP. SOFT referred to issue #1 (page 3, section 2) procedures of removing a child from a home and redress by the parent toward the Department. He said this a concern both by the Department and the Senate.

SENATOR BURNETT said the Senate ruled that section out of the bill, and asked SENATOR BAER and SENATOR DOHERTY to make comments as to why that was ruled out.

SENATOR BAER said the Senate amendments were SENATOR HALLIGAN's amendments, he presented them to the Senate for action.

SENATOR DOHERTY said they provide legal redress for unlawful interference with the family's right to remain intact. It was recommended to delete this because if there is an unlawful interference or if there's an improper removal, the family does have some redress and they have the right to sue the Department. This amendment was offered because the right to sue the Department for improper removal already exists.

REP. SIMPKINS said the problem is the family has to get a lawyer because they had no say in the matter until then. The case is not investigated until they go to court to show cause for removal. He said there needs to be some type of hearing before the child is removed.

SENATOR BURNETT said he had discussed that issue with some family counselors. He wanted to add an amendment to this portion of the bill requiring a family EIS (estimated impact statement) to be developed by the Department which would address the affects of

intrusion into the family and its affects before taking the child out of the home. This EIS would be done by DFS and someone who is not an employee of DFS. The family needs to know what they are being investigated for, because many of the communications he has received from families indicated they didn't know where the children were, some were taken from school, and didn't know why.

SENATOR DOHERTY said he agreed, but Section 2 is about the policy, and the policy is to try to achieve unity and welfare of the family whenever possible. When the Department determines a youth is in need of care and removal is necessary, it is essential that the mechanics of operation, notice, notification, etc. are being done.

REP. SIMPKINS asked how can it be insured an investigation takes place before the child is removed.

SENATOR BURNETT said a referral is made to DFS, and the family has no idea of the charges against them before children are removed. He said all of the letters he has received state the same problems.

John McMaster referred to Section 9, 41-3-301, page 13, lines 20-30, Emergency protective service, saying when a child is taken out of the home immediately, it's an emergency situation.

SENATOR BURNETT said DFS should make a determination the children are in immediate danger before removing them from the home. He said he has many examples, in letters, where children have been removed from homes when they were in no immediate danger, and he doesn't know if a case worker even evaluated the home situation thoroughly. He said when the Department reviews the case, it's the case worker's report, and for that reason wanted to direct DFS to develop a EIS, which will add some checks and balances, none of which exist now for the field case workers.

REP. McCANN asked SENATOR BURNETT if he simply wants a statement of intent of why the child is being removed from the home.

SENATOR BURNETT said he wants a statement proving it is a fact.

REP. McCANN asked about the EIS.

SENATOR BURNETT said the EIS is a statement about the family, information from family friends and even children in the family, and there must be a definite concern that abuse has occurred.

REP. McCANN asked about the time necessary to develop an EIS and what is an emergency.

SENATOR BURNETT said if there is abuse and the child is injured, the child should be taken, but the abuse didn't just happen overnight. In an EIS, the case worker could determine if there have been previous problems where the police had to be called, or

called on more than one occasion, then it could be assumed there is a problem of abuse. He said friends and neighbors should be interviewed to determine if there is a problem, but this does not happen.

REP. McCANN asked if an EIS presently exists.

SENATOR BURNETT said he is recommending that an EIS be developed.

REP. SIMPKINS said there overuse or misuse of Section 41-3-301, Emergency protective service, and related a Great Falls case of misconduct by DFS. He said there is overuse of this section.

SENATOR BAER said there must be procedural due process mechanism to protect against this overuse, and unless a child is in danger, law enforcement officers could use their discretion to evaluate the situation. He said there needs to be procedural safeguards against the misuse of this section using the existing code or adding to it.

SENATOR DOHERTY referred to Section 41-3-301, saying the trigger is someone believes a youth is in immediate or apparent danger of harm resulting in the immediate removal, but once removed, a petition must be filed under 41-3-401, within 48 hours of emergency placement. Unless they do that, they can't keep the child in that emergency placement. If they want to continue to keep the child in that placement, they must reveal the reasons for their actions. If they don't follow this procedure, then the child must be returned to the family.

SENATOR BURNETT said he wishes things were actually like that, but in reality, it's not. He related a case where a child was taken when there was no physical threat to anyone. He said the Department is doing a job that is essential, but case workers must be held responsible or accountable for their actions.

REP. SOFT referred to lines 16-17, asked if there should be an addition to the law to give parent redress when an inappropriate action has taken place, or whether this is covered in another part of the law. He asked if this section would provide that protection if it is left in the bill.

John McMaster said he can't see that it's too harmful, because the redress is already there, but as a declaration of policy, it could lead people to think there's something being added to give them more legal redress.

REP. SIMPKINS said there are 2 extremes, one is to do nothing or over reaction, and it's the over reaction that's causing parents to get legal assistance to find the case in court. He asked if there is something in-between where the Department has to follow through and the parents will have access without having to go to court.

SENATOR DOHERTY said the Senate amendments were reasonable and the amended version of the bill was what the Senate wanted.

SENATOR BURNETT said he wants to require certain responsibilities from the Department, not so much the Department in Helena, but the field personnel.

SENATOR DOHERTY asked SENATOR BURNETT if he wanted to go through all the Senate amendments. He said he didn't want to give the Department a free hand, and wondered if there was specific language in the bill that is objectionable and could be changed.

SENATOR BAER said he voted against the amendments in the Senate Judiciary Committee because they struck a substantial portion of the entire bill. He recommended using REP. SOFT's outline to come up with language that can be inserted into the bill.

SENATOR BURNETT suggested REP. SOFT clarify each issue on his list.

REP. SOFT asked about the legal redress issue, whether the Committee felt that had already been covered or take it out.

SENATOR BURNETT said he wouldn't object because John McMaster said it is covered in other parts of the bill, so it could be left out.

REP. SIMPKINS asked if "preserve the unity of the family wherever possible" shouldn't be the first priority of family services, or if "wherever possible" is strong enough language (line 16). He said that should be strengthened so that is the ultimate objective, and wondered if there was any legal language to make that a stronger statement.

SENATOR BAER suggested "the primary directive would be to preserve the unity and welfare of the family" to make that the major emphasis.

SENATOR DOHERTY said there were 2 subsections of policy, but they have not been prioritized so each one is important in the policy directive.

REP. SIMPKINS asked why should "whenever possible" be left in.

SENATOR DOHERTY said if the policy is to protect family unity, taking out "whenever possible" dilutes the ability to take a child out in a dangerous situation when the desire is not for family unity, but simply to get the child out.

REP. SOFT asked if there was agreement to take out "and" after "possible" on line 15.

REP. SIMPKINS said it's out already.

REP. SOFT referring to page 3, lines 18-21, said there are 2 issues there. The first, removing the child based solely on allegations of abuse, and second, filing a criminal versus civil complaint. He said he likes that statement as written, but knows it's a major change going from civil to criminal.

REP. SIMPKINS said when spousal abuse was changed from civil to criminal charges, there was a tremendous drop of spousal abuse in the State, and asked if this is the appropriate place to address that issue.

REP. McCANN said it would depend on what the Committee's intent of the bill, and asked whether the table should tip toward the child or back toward the authority of the parents.

SENATOR BURNETT said a completed EIS from the Department and an independent party, such as law enforcement or county attorney, could make that determination.

REP. McCANN asked whether the code already exists and whether the intent is for the EIS to be done before or after the removal of children from the home.

SENATOR DOHERTY said a responsible official cannot make a move unless there is reason to believe there is an immediate threat to the health and safety of the youth, they must have some basis for this belief, and it must be documented. There must be some reasonable basis to believe there is a threat before they intervene in a family's life. Once they have intervened, they have to return the child unless they have filed a petition alleging abuse or neglect. Then the statements, facts, evidence, and the basis is for suspecting abuse must be made. He said it may be an imperfect system and if there are workers who are abusing it, the Department should fire them.

REP. McCANN said that is a point of contention with the Committee, because there is abuse of the system and the workers are not being fired, but doesn't want to jeopardize the integrity of the bill because it's set up for the protection of children.

SENATOR BURNETT said it is necessary to require the Department to make a determination, beyond a reasonable doubt, there was abuse. He said nobody wants to keep the Department from acting where there is child abuse, but the Department should not enter in when there is no abuse or suspected abuse.

REP. SIMPKINS said the new definition of abuse is "any action taken that left a physical mark." Therefore, a swat on the buttocks constitutes abuse. He suggested "insure there is no forced removal of a child from a family because of suspected abuse." He said there must be more than just a suspicion.

SENATOR BAER referred to Section 2, 41-3-101, saying it talks about policy and in 41-3-401 it refers to current procedures. He

said he didn't they should be mixed and he agreed with the suggested wording.

SENATOR BURNETT said family counselors thought this is where an EIS should be involved, and presented to the judge for a TIA (Temporary Investigative Authority). At present, the case workers continue the TIA after discovery, and he thinks that is wrong. The discovery should determine whether abuse is a fact or not.

SENATOR BAER said the focus should be on a proposal to ensure there is no forced removal of the child because of suspected abuse.

SENATOR BURNETT said the language could be removed, if it was agreeable with the Committee.

SENATOR DOHERTY said it's his understanding if a teacher or any provider suspects abuse, they are obligated to report it. The Department does a preliminary investigation, and with information gathered and the report to DFS has a reasonable basis in fact there was abuse, they act on the information. But, taking that language out, "ensure there is no forced removal of a child because of suspected abuse," when there is an instance of suspected abuse, it says the child should remain in the family even though there is suspected abuse.

REP. SIMPKINS asked **SENATOR DOHERTY** if his statement nullifies 41-3-301, the emergency protective services. If there is a strong suspicion of imminent danger, they have a right, under 41-3-301, to take the child out of the home immediately. There must be more than just a suspicion of abuse, and if it is felt there is endangerment, then the rights can be exercised under 41-3-301. The policy should not just say remove on suspicion, and policy needs to be developed for that. The Department would have to develop their own rules to preserve the unity and welfare of the family whenever possible. He suggested instead of providing legal redress, maybe provide a hearing process for the parents, rather going to court.

SENATOR DOHERTY said he thinks they do that now.

REP. SIMPKINS said under emergency procedure, within 48 hours of a child being removed from a home, a petition must be filed to the court, just for suspicion. He said the parents should be allowed some type of recourse without having to hire a lawyer, and the case should be reviewed by someone in the Department above the caseworker, and asked if there could be a hearing with the parents within 48 hours.

Ann Gilkey said do have that in their policy manuals.

REP. SIMPKINS asked where is it located in the law, and said **SENATOR BURNETT** wants the case reviewed by someone above the caseworker, who has authority to go ahead or drop it.

Ann Gilkey said the supervisor does review.

REP. SIMPKINS said language could be put into the policy statement that procedures exist for a supervisor review. He said the emergency procedure should only be done in a drastic situation, and the Department should be well-prepared to defend in court for exercising the provisions of the emergency procedure.

Ann Gilkey agreed and referred to the suspected abuse provision, saying, there are a lot of stories about inappropriate removal of children, and related a story of a Wolf Point child killed by parents because the mothers' explanation of how the child sustained injuries could not be disproved, and the child remained with the parents until killed.

REP. SIMPKINS talked about a case in Great Falls where a DFS caseworker exercised an abuse of their powers, and asked if there is a system, when there is no history of child abuse, where the

Richard Kerstein said he can't imagine a situation where a child had been spanked, DFS declaring there is an imminent risk to the child's life, and the child removed. He asked if someone knows about those cases and can't imagine a case worker removing a child for just being spanked. He said they notify the parents in writing, that it was substantiated, tell of appeal process, and they notify parents when child is removed. He related a case about a woman who was angry her 4 children were removed and didn't know why, but the reality of story is, she was passed out when police came to the home. He said that's reality and doesn't know how to deal with that.

SENATOR BURNETT said there are extremes, but if a directive is put into this bill so the Department makes every effort, such as developing an EIS, to create a system of checks and balance. At present, the case worker becomes judge and jury and Department backs them up, and that's it. An EIS could be developed for the family to understand the charges, and the caseworker do a thorough investigation and come up with facts and figures. He said in the Judiciary Committee hearing, there was some question from the department about definitions of various words. He read a list of definitions. EXHIBIT 1.

REP. SOFT suggested wording "ensure there is no forced removal from a family based solely upon an allegation of abuse or neglect." and asked Ann Gilkey if that would bring balance without weakening the DFS's ability to act.

Ann Gilkey said she understood what the Committee is trying to do, and that wording is closer than allegation, and suggested adding "anonymous" before allegation.

REP. SIMPKINS said he didn't think anonymous is needed, but would leave it as "based solely upon allegation."

REP. SOFT talked about using "unsubstantiated allegation".

SENATOR BAER said "unsubstantiated allegation" might make it more precise.

John McMaster referred to page 9, line 17, and said that change was put in by the House. He said a policy statement is very different from giving a directive, such as "you will do." He said the policy to ensure there is no forced removal of a child from the family because of suspected abuse, then referred to section 41-3-301, saying "because of suspected abuse" is close to current law, which is reason to believe.

{Tape: 1; Side: 2; Comments: some comments difficult to understand due to room noise, mumbling, and several people talking at the same time.}

REP. SOFT referred to page 3, lines 18-19, and asked what was the Committee's decision about these lines, "ensure there is no forced removal of a child from the family based solely upon an unsubstantiated allegation of abuse."

John McMaster suggested different terminology to eliminate misinterpretation.

SENATOR BURNETT said definitions need to be added in the definition section.

REP. SIMPKINS said policy should put it in as any kind of report, whether anonymous or not

REP. SOFT moved Section (e), lines 18-21, remain "ensure there is no forced removal of a child from the family based solely upon an unsubstantiated allegation of abuse and neglect."

SENATOR DOHERTY suggested using the word "alleged."

REP. SIMPKINS said strike "unsubstantiated" and insert "alleged."

REP. SOFT read the changed statement: ensure there is no forced removal of a child from the family based solely upon an alleged abuse and neglect.

John McMaster said using the word "alleged" could mean there are 12 people alleging it. He suggested the wording: based solely upon an unsubstantiated allegation, because that is referring to just one allegation.

REP. SOFT again read the statement: ensure there is no forced removal of a child from the family based solely upon an unsubstantiated allegation of abuse or neglect.

SENATOR BURNETT asked if the Committee agreed with that wording. All agreed.

REP. SOFT read lines 26-27, page 3, and said he agreed with that, but suggested changing to: maintain ethnic, cultural, and religious heritage whenever appropriate.

SENATOR BURNETT asked for the Committee's approval for the change. All agreed.

REP. SOFT suggested deleting lines 12-16, page 6, because the term is no longer being used.

SENATOR BURNETT asked for the Committee's approval for the change. All agreed.

SENATOR BURNETT said he would like to insert the list of definitions into section 3. EXHIBIT 1.

REP. SIMPKINS asked where the definitions would be used in the bill.

SENATOR BURNETT said it needs to be in the identification portion, page 9, and needs to be in the code.

SENATOR BAER said these are terms used in the bill, and there needs to be definition of what the terms mean in order to understand.

REP. SOFT referred to page 4, lines 1 and 2, and suggested striking "and provide legal redress for interference with the family." He said lines 6-10 were deleted in the Senate and has no problems leaving it that way.

All agreed to delete (8) and (9).

REP. SOFT said he agreed with the Senate's striking "knownly" from lines 13-14, page 5. All agreed. He referred to lines 16 and 17, which were stricken in the Senate, and wondered why.

SENATOR BURNETT said he thought it is a brain-washing situation and is necessary to be included.

REP. SOFT said he would interpret that as emotional abuse, and asked Ann Gilkey to comment.

Ann Gilkey talked about the various types of abuse, including the emotional abuse.

SENATOR BURNETT moved to restore lines 16-17, page 5, in the bill. All agreed.

REP. SIMPKINS reviewed the changes agreed on, for clarification: page 5, strike 28-30, page 6, line 12-16, and referred to page 6, lines 20-22.

REP. SOFT said that portion was stricken by the Senate.

REP. SIMPKINS said page 6, lines 19-22, said that was changed to prevent someone being charged with abuse for changing a diaper.

All agreed with the Senate's amendment to lines 19-22.

SENATOR BAER said he thought there could be a better definition for unfounded information.

REP. SIMPKINS asked if it is needed.

SENATOR DOHERTY said some of these may be in rules, and suggested asking the Department.

Ann Gilkey said unfounded and unsubstantiated are defined in rules, but unfounded and substantiated are not in the bill, and they are definitions they have been working with.

SENATOR BURNETT asked if the Department has discipline, independent, or corroborative information.

Ann Gilkey said they do not have discipline, independent, corroborative information, or attributable information.

REP. SOFT asked how detention would be defined.

SENATOR BURNETT said detention is confining to an area.

SENATOR DOHERTY said the word discipline is not used in the bill.

SENATOR BURNETT said physical discipline such as spanking is not abuse. Discipline should not be abuse.

SENATOR DOHERTY said some of these terms are not needed. He said corroborative is a legal term developed in case law.

REP. SIMPKINS said the terms already in law do not need to be redefined in the bill, because they are universal law.

SENATOR BURNETT asked about the terms independent and attributable.

SENATOR DOHERTY asked where attributable is used.

John McMaster said it is used on page 9, line 19.

SENATOR BURNETT said in the House Judiciary Committee, they wanted to know what the term meant.

SENATOR BAER said it should be as defined in the dictionary.

SENATOR BURNETT said attributable comes from an identified source.

SENATOR BAER said attribute something to its source, or identify its source, but didn't think it needed to be included in the bill.

All agreed to drop the definitions discussed.

REP. SOFT asked if Section 4 was original language, but was stricken.

Ann Gilkey said 41-3-301 is not from the statute.

REP. SOFT suggested adding definitions for a social worker. He said there were questions in the House Committee meeting about the education and training for a social worker, and whether they have the training to do the investigations.

SENATOR DOHERTY said social worker is defined on page 6, lines 26-27.

REP. SOFT said he wanted that deleted and insert another definition, and add investigator.

Ann Gilkey said they have a hiring criteria for a social worker, but wondered if there would be problems with changing it in the bill.

REP. SOFT said the suggested definition came from Bob Torres.

REP. McCANN asked what the definition would be.

REP. SOFT referred to line 26, a social worker means, then add the new definition.

Ann Gilkey said there the statutes refer to a social worker being employed by the Department, and possibly the new definition for a social worker is too broad.

REP. SIMPKINS asked if adding "a person who works for the Department" is acceptable.

Ann Gilkey suggested using either "has the equivalent verified experience or by training" instead of and.

REP. SOFT read the change, line 26: social worker means an employee of the Department who has been educated, etc., then equivalent verified experience or training. He said he wanted to add a new subsection "Investigator" an official who has training verified by the Department and meets specific qualifications established by the Department to investigate child abuse and life

endangerment. He said the bill talks about these individuals being able to do investigations.

REP. SIMPKINS asked if investigator is in this section of law.

John McMaster said he can't find it in the Act.

SENATOR BAER said an investigation would involve an investigator.

REP. SIMPKINS referred to page 9, line 11. He suggested changing line 10 to read: an investigator shall properly conduct an investigation, then add the definition. Referring to line 10, he asked Ann Gilkey if there should be further definitions.

SENATOR DOHERTY asked if an investigator has to have training verified by the Department, does any police officer or deputy county attorney who investigates they have training verified by the department.

REP. SOFT asked what qualifies a police officer to do a child abuse investigation.

SENATOR DOHERTY said usually someone from DFS talks to the deputy county attorney saying they have the facts and know what is going on, and you have to file the charges. The deputy county attorney has training in law and would know there is enough evidence for a case, but they may not know social work.

REP. SOFT asked Ann Gilkey how often do police officers and county attorneys get involved in or do the investigation.

Ann Gilkey said county attorneys become involved with a social worker goes to them in a civil case or if it's a criminal case, law enforcement would be involved as well. The county attorney would verify what is going on but would not go out to do an investigation.

REP. SIMPKINS said this issue should be left alone.

REP. SOFT said there was a question about video taping in a particular place.

Ann Gilkey said there are many problems with mandatory video taping.

SENATOR BURNETT said it is important to video tape the initial interview with the child.

REP. SIMPKINS asked where the video taping could be done.

Ann Gilkey said it could be done anywhere and they are willing to share the video tape.

REP. SIMPKINS suggested leaving lines 1-4, page 10 as is because the family would have access to the video tape.

SENATOR BURNETT suggested leaving the charges civil for now.

REP. SIMPKINS agreed and said abuse didn't just happen overnight, and can't be changed overnight.

REP. SOFT said section 17, page 24, #4 was stricken.

Laurie Koutnik said it was stricken because of the concern of confidentiality by foster parents, that as foster parents, they do not want the family to know your location.

SENATOR BURNETT said it's important the victim family have some background about the foster parents.

Laurie Koutnik said all foster care parents have to go through training and licensing procedures.

SENATOR BURNETT told of a case where a 15-year old girl was placed in a foster home where there was a 17-year old boy, and he raped her 3 times, and as far as he knew, the Department did nothing.

Laurie Koutnik said another bill allows for children to be placed with family if possible, and thinks that is what the Department tries to do.

REP. SIMPKINS suggested leaving section 17 out. All agreed.

SENATOR BURNETT referred to section 18 which was stricken by the House, but he thinks it is important for this to be included.

Ann Gilkey said there are already provisions in the law if a foster child causes damage, the Department is liable up to \$2,500. She didn't think they should assume responsibility or liability for any action of any child in temporary custody by the Department.

REP. SOFT asked if the child is in custody, what happens when a child does cause damage.

Ann Gilkey says the Department is sued, but the liability is determined in the courts, and doesn't think assuming liability should be included in the bill.

SENATOR BURNETT said he would agree to some change providing the parent had some authority in the situation, but they do not.

Laurie Koutnik asked about the purpose.

SENATOR BURNETT said it was suggested when the bill was drafted.

SENATOR BAER asked it's for strict liability or negligence by the Department.

REP. SIMPKINS said who is responsible for the actions of a child placed in a foster home; because the child is not in the parents custody. If that child is abused in the foster home, can the Department sue them and who has the rights.

SENATOR DOHERTY said the kid who is abused in a foster home can bring suit against the Department for their not providing a protective environment. Language saying the Department assumes all liability means a strict liability standard. If the does something negligent and the child is hurt or hurts someone else, then the Department should be liable. But, to say, the Department has all liability when a child is in custody, is not good policy.

SENATOR BURNETT asked if it could be reworded to say the child's parents no longer are liable. He said he wants to relieve the parents of any liability.

SIMPKINS suggested liability as a result of actions taken by the Department or temporary home.

SENATOR BAER said if the parents have no control or dominion over the child, they can't be found liable.

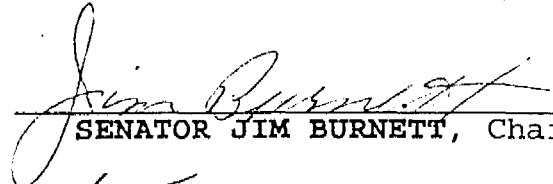
Ann Gilkey said is care should be taken not to take away any rights the court does not specify to be taken from the parents. They don't want to take rights away from the parents unless the parental rights are terminated.

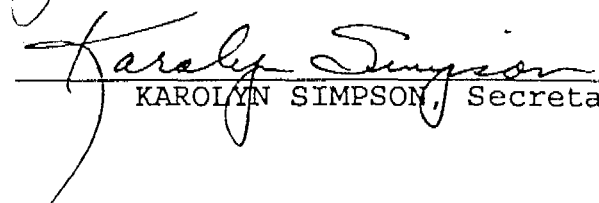
REP. SIMPKINS said there are no votes to put it back in.

John McMaster reviewed the amendments for conformation of the Committee.

ADJOURNMENT

Adjournment: 12:35 PM


SENATOR JIM BURNETT, Chairman


KAROLYN SIMPSON, Secretary

JB/ks

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 206

DATE 4/10/95

NAME	PRESENT	ABSENT	EXCUSED
Senator Burnett	X		
Senator Baer	X		
Senator Doherty	X		
Rep. Soft	X		
Rep. Simpkins	X		
Rep. McCann	X		

Free Conference Committee
on SB 206
Report No. 1, April 10, 1995

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 206, met and considered:

SB 206 (reference copy - salmon) in its entirety

We recommend that SB 206 (reference copy - salmon) be amended as follows:

1. Page 3, line 15.

Strike: "AND"

2. Page 3, line 21.

Following: "associate"

Insert: "; and

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect"

3. Page 3, line 27.

Strike: "free from proselytism"

Insert: "whenever appropriate"

4. Page 5, line 18.

Following: line 17

Insert: "(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;"

Renumber: subsequent subsections

5. Page 6, lines 12 through 16.

Strike: subsection (12) in its entirety

Renumber: subsequent subsections

6. Page 6, lines 26 and 27.

Strike: "whose" on line 26 through "both" on line 27

Insert: "who, prior to the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter"

ADOPT

REJECT

821501CC.SPV

7. Page 7, line 14.
Strike "(17)"
Insert "(16)"

And that this Free Conference Committee report be adopted.

For the Senate:

Burnett

Chair

Baer

Doherty

Amd! Coord.

Sec. of Senate

For the House:

Simpkins

Chair

Soft

McCaughy

SB 206

Page 4. Sec 3 41-3-102.

DEFINITIONS:

UNFOUNDED INFORMATION - IT PROBABLY HADN'T HAPPENED OR IS FALSE INFORMATION.

DISCIPLINE - A METHOD OF TEACHING SELF CONTROL, TRAINING AND CORRECTION. (THIS CAN INCLUDE DETENTION AND PHYSICAL CONTACT THAT DOES NOT AND WILL NOT CAUSE PHYSICAL INJURY)

INDEPENDENT - INFORMATION (CAN INCLUDE, BUT NOT LIMITED TO, ATTRIBUTABLE STATEMENTS, PHYSICAL EVIDENCE, STATEMENTS FROM OTHER THAN THE FAMILY OR FAMILY ASSOCIATES) OBTAINED FROM A SOURCE THAT IS DIFFERENT OR SEPARATE FROM THE ANONYMOUS REPORT.

CORROBORATIVE INFORMATION - (CAN INCLUDE, BUT NOT LIMITED TO, ATTRIBUTABLE EVIDENCE, STATEMENTS FROM THE CHILD, STATEMENTS FROM THE ACCUSED, STATEMENTS FROM OTHER FAMILY MEMBERS OR FAMILY ASSOCIATES) THAT SUPPORT THE ANONYMOUS REPORT AND IS NOT CONTRADICTORY OF THE ANONYMOUS REPORT.

ATTRIBUTABLE INFORMATION - THAT COMES FROM AN IDENTIFIED SOURCE. THE INFORMATION AND THE SOURCE ARE SUBJECT TO DISCOVERY IN LEGAL PROCESS AND SUBJECT TO CROSS-EXAMINATION IN A LEGAL PROCEEDING.

unsubstantiated information is it probably happened but can't be proven

SB 206
BURNETT

Re: Free Conference Committee
Issues/Considerations

1. Clarifying Policies/Procedures for removal of a child from the home. (Section 2)
2. Clarifying the issue of appropriate ethics, cultural and religious heritage availability to children placed in foster care. (Sections 2,3)
3. Clarifying the issue of legal redress for inappropriate interference with the family (Section 2)
4. Clarifying definition of a "family." (Section 3)
5. Clarifying definition of physical, mental, emotional abuse. (Section 3)
6. Clarifying the definitions and qualifications of social workers (new section)
7. Clarifying the definition and qualifications of the abuse investigator. (new section)
8. Clarifying the immunity of clergy in reporting abuse. (Section 4)
9. Clarifying the issue of videotaping interview with the child and the admissibility of same in court proceedings. (Sections 5, 6)
10. Clarifying the issue of criminal vs civil proceedings for persons charged with abuse of child/children. (Sections 9, 11, 12, 13)
11. Clarifying what information is available to the parents after child is removed from home and appropriateness/frequency of contact with the child (Section 17)

Section 3 (Definitions)

- 12 Section 18 - In.
- (1) Social worker means a person who has been educated or trained and/or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent/verified experience and who has verified training in the investigation of child abuse, neglect and endangerment prior to their field assignment.
 - (2) Investigator means an official who has training verified by the Department and who meets specific qualifications established by the Department in the investigation of child abuse, neglect and endangerment. Investigators can be but are not limited to social workers, case workers, officials in the county attorney's office and peace officers.

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